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TITLE 12

LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS

(CHAPTERS 1-59 IN VOLUME 8A)

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CHAPTER 61

MILITARY FORCES

SUBCHAPTER.

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SUBCHAPTER 1 — STATE MILITIA GENERALLY

SECTION.

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Effective Dates. Acts 2007, No. 47, § 11: Feb. 1, 2007. Emergency clause pro-

vided: "It is found and determined by the General Assembly of the State of Arkan-

sas that there are many members of the Arkansas National Guard and Reserves that are serving in active duty in Iraq and Afghanistan in the war on terror; that it is critical that Arkansas law be updated and be consistent with federal law and rules; and that this act is necessary to eliminate confusion regarding out-dated and inconsistent provisions in the Military Code of Arkansas. Therefore, an emergency is declared to exist and this act being neces-

sary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-61-105. Adjutant General — Qualifications — Salary.

(a) There shall be an Adjutant General of the state who shall be appointed by the Governor and shall be a commissioned officer in the Adjutant General's department of the National Guard of this state and shall have rank not higher than lieutenant general.

(b) To be eligible for appointment, he shall be a citizen of the United States and a resident of the State of Arkansas, and:

(1) He must be an officer in the active militia with not less than seven (7) successive years' service immediately next preceding his appointment; or

(2) He must have been in service in the active militia of this state as a commissioned officer for a period of fifteen (15) years, eight (8) of which were as a field grade officer or general officer, or both combined; or

(3) He must have held the rank of a field grade officer in the active militia and, as such, have been called into federal service and have commanded a unit during such service.

(c)(1) The pay of the Adjutant General and the assistant adjutant general shall be the same as is allowed to officers of like grade, service, and rank by the pay tables of the United States Army or Air Force at the time such pay accrues.

(2) The Adjutant General is permitted to receive payments in addition to regular salary as provided by § 21-5-201 et seq. while serving in the federal position of technician while also serving as Adjutant General. Such additional payments are provided for in Title IV of the Intergovernmental Personnel Act of 1970, Public Law 91-648.

History. Acts 1969, No. 50, § 10; 1977, No. 694, § 6; A.S.A. 1947, §§ 11-110, 11-110.1; Acts 2007, No. 47, § 2.

Amendments. The 2007 amendment substituted "lieutenant general" for "major general" at the end of (a).

12-61-107. Employment of personnel.

(a) The Adjutant General shall have such assistance and such clerks, employees, and laborers as may be necessary from time to time who shall be appointed and may be removed by him at his discretion.

(b)(1) The Adjutant General may designate those positions that require the employee to be a member of the National Guard.

(2) This subsection shall only apply to a person who begins employment with the State Military Department after August 12, 2005.

History. Acts 1969, No. 50, § 12; A.S.A. 2005, No. 52, § 1, subdivision (b)(2) ended 1947, § 11-112; Acts 2005, No. 52, § 1. with "after the effective date of this act."

A.C.R.C. Notes. As enacted by Acts

12-61-108. Deputy adjutants general.

(a)(1) The Adjutant General is authorized to appoint, subject to the approval of the Governor, four (4) deputy adjutants general who will hold rank of not higher than one (1) grade below that held by the Adjutant General up to and including the rank of major general.

(2) Two (2) deputy adjutants general will be Army National Guard and two (2) deputy adjutants general will be Air National Guard.

(3) However, the foregoing shall not preclude the appointment of federally recognized lieutenant generals to perform the additional duties of deputy adjutants general.

(b) At the time of the appointment:

(1) He must be an officer in the active service in the Army National Guard or the Air National Guard of this state for three (3) successive years immediately preceding his appointment; or

(2) He must have been in the active service in the branch or arm for which appointed of the Army or Air National Guard as a commissioned officer; or

(3) If not in active National Guard service at the time of appointment, he must have had prior service of at least six (6) years in the branch or arm of the Army National Guard or Air National Guard of this state.

(c) The deputy adjutants general must have a thorough knowledge of the organization and missions of the departments and components of the armed forces of the United States.

(d) To be eligible for appointment as a Deputy Adjutant General for Air, the officer must be assigned to the Air National Guard in the rank of colonel, federally recognized.

(e) He shall subscribe to the oath of office prescribed for members of the Arkansas Army National Guard and Air National Guard, which oath shall be deposited in the office of the Adjutant General.

(f) He shall, during his term of office, be entitled to all rights, privileges, and immunities granted officers of like rank in the Arkansas National Guard.

(g) He shall aid the Adjutant General by the performance of such duties as may be assigned to him.

History. Acts 1969, No. 50, § 14; A.S.A. 1947, § 11-114; Acts 1987, No. 360, § 1; 1991, No. 510, § 1; 2007, No. 47, § 3.

Amendments. The 2007 amendment,

in (a)(1), substituted "four (4)" for "two (2)" and "major general" for "brigadier general"; in (a)(2), substituted "Two (2)" for "One (1)" twice and substituted "adju-

tants" for "adjutant" twice; and substituted "lieutenant" for "major" in (a)(3).

12-61-111. Ordering militia into service.

(a)(1) The Governor shall have power to order into the active service of the state for such a period, to such extent, and in such manner as he may deem necessary, all or any part of the organized militia:

(A) In case of invasion, disaster, insurrection, riot, breach of the peace, or imminent danger thereof;

(B) To preserve the public health and security and maintain law and order; or

(C) For the purpose of working with other state agencies in the planning and training for emergencies or disasters and to respond to emergencies or disasters.

(2) Such power shall include the power to order the organized militia or any part thereof to function under the operational control of the United States Army, Navy, or Air Force commander in charge of the defense of any area within the state.

(b)(1) Upon the request of either the judge or sheriff of a county or the mayor of a city, whenever it is made to appear to the Governor that there is a breach of the peace, riot, resistance to process of this state, or disaster or imminent danger thereof, the Governor may order into the active service of the state, for such period, to such extent, and in such manner as he may deem necessary, all or any part of the organized militia.

(2) The compensation of all officers and enlisted personnel while on duty or assembled pursuant to this subsection and all expenses incurred in connection with such duty or as a result thereof shall be paid in the manner prescribed by law.

History. Acts 1969, No. 50, §§ 6, 7; 1985, No. 670, § 1; A.S.A. 1947, §§ 11-106, 11-107; Acts 2009, No. 232, § 1. in (a)(1), inserted (C), rearranged and redesignated the remaining text, and made related changes.

Amendments. The 2009 amendment,

12-61-115. Proclamation of emergency.

(a) Whenever any portion of the militia is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order or preservation of the public health or security will thereby be promoted, may by proclamation declare the county, city, zone, or sector in which the troops are serving, or any specified portion thereof, to be in a state of insurrection or emergency.

(b) Should the Governor proclaim a state of insurrection or emergency hereunder and in the event the local courts or law enforcement officers are incapable of functioning, such legal functions in furtherance of the enforcement of the civil laws of the state shall be performed by the militia.

(c) This section does not authorize the seizure or confiscation of any firearm or ammunition from any individual who is lawfully carrying or possessing the firearm or ammunition.

(d) Any law enforcement officer or member of the militia who seizes or confiscates a firearm or ammunition from an individual under this section shall return the seized or confiscated firearm or ammunition to the individual unless:

(1) The individual is arrested for a criminal offense; or

(2) The seized firearm or ammunition is needed as evidence in the furtherance of an investigation of a criminal offense.

History. Acts 1969, No. 50, §§ 8, 20; A.S.A. 1947, §§ 11-108, 11-120; Acts 2007, No. 1578, § 1.

Amendments. The 2007 amendment added (c) and (d).

CASE NOTES

In General.

Subsection (a) of this section left the decision as to whether to issue a proclamation of a state of insurrection or emergency to the discretion of the Governor of Arkansas; however, the lack of such a proclamation did not mean that the Na-

tional Guard's involvement in counter-drug surveillance was unlawful, particularly since the Governor had certified that the counterdrug plan complied with Arkansas law. *United States v. Boyster*, 436 F.3d 986 (8th Cir. 2006).

12-61-121. Awards, medals, etc.

(a)(1) The Governor is authorized to award in the name of the State of Arkansas any medal, ribbon, or decoration for any exceptional or meritorious service rendered by any member of the organized militia.

(2) These include, but are not limited to, the "Arkansas Commendation Medal", the "Arkansas Distinguished Service Medal", and the "Arkansas Star of Honor".

(3) The Military Department of the State of Arkansas is authorized to promulgate necessary rules and regulations to establish the criteria under which any medal, ribbon, or decoration may be awarded.

(b) Whenever it shall appear to the satisfaction of the Adjutant General that any service medal duly issued by the State of Arkansas, in accordance with the military rules and regulations, to a member of the organized militia, has been lost or stolen, he may, in his discretion, and upon such terms as he may impose upon written application of the person originally entitled to such medal, issue a duplicate thereof.

History. Acts 1969, No. 50, §§ 201, 202; A.S.A. 1947, §§ 11-1103, 11-1104; Acts 1991, No. 550, § 1; 2007, No. 47, § 1.

substituted "Arkansas Star of Honor" for "Arkansas Medal of Honor" at the end of (a)(2).

Amendments. The 2007 amendment

12-61-124. Civilian juvenile student training programs.

(a) The Adjutant General may, at his discretion and with such funds as may be appropriated by the General Assembly, or with such funds as may be provided by the United States, develop and implement civilian juvenile student training programs for the purpose of providing training, education, health, welfare, rehabilitative, and other services to juveniles.

(b) The Adjutant General is authorized to enter into agreements, contracts, and memoranda of understanding with other state, federal, and local agencies, other persons, firms, and corporations, and the juvenile courts of this state for the purposes of providing training, education, health, welfare, rehabilitative, and other services to juveniles participating in such programs as may be implemented by the Adjutant General.

(c) The Adjutant General may promulgate and issue such rules, regulations, and other guidelines as may be necessary and proper to carry out the purposes and provisions of this section.

(d)(1) Juvenile participants in the Civilian Student Training Program receiving services from the Arkansas National Guard are authorized to receive a monetary stipend, not to exceed ten dollars (\$10.00) per week to defray personal hygiene and other personal necessities. Juvenile participants are authorized to receive uniforms and clothing items as determined by the staff to be appropriate for effective participation in outdoor activities.

(2) Transportation to support Civilian Student Training Program activities for juvenile participants and staff may be provided by commercial lease/purchase of motor vehicles not to exceed six (6) vehicles.

History. Acts 1993, No. 375, § 1; 1995, No. 639, §§ 18, 19; 1997, No. 1201, § 2.

A.C.R.C. Notes. Acts 2011, No. 331, § 16, provided: "CIVILIAN STUDENT TRAINING PROGRAM TRANSPORTATION. Transportation to support Civilian Student Training program activities for

juvenile participants and staff may be provided by commercial lease/purchase of motor vehicles not to exceed six vehicles at Camp Joseph T. Robinson.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

12-61-125. National Guard Youth Challenge Program — Stipend.

(a) Juvenile participants in the Arkansas National Guard Youth Challenge Program at Camp Joseph T. Robinson receiving services from the Arkansas National Guard are authorized to receive a monetary stipend, not to exceed fifteen dollars (\$15.00) per week to defray personal hygiene and other personal necessities, and a monetary stipend not to exceed two thousand two hundred dollars (\$2,200) upon graduation from the program to defray costs for additional job training or education.

(b) Juvenile participants are authorized to receive uniforms and clothing items as determined by the staff to be appropriate for effective participation in outdoor activities.

History. Acts 1995, No. 639, § 17; 1997, No. 821, § 21.

A.C.R.C. Notes. Acts 2011, No. 331, § 17, provided: "YOUTH CHALLENGE PROGRAM — STIPENDS. Juvenile participants in the Arkansas National Guard Youth Challenge Program at Camp Joseph T. Robinson receiving services from the Arkansas National Guard are authorized to receive a monetary stipend, not to exceed fifteen dollars (\$15.00) per week to defray personal hygiene and other per-

sonal necessities, and a monetary stipend not to exceed two thousand two hundred dollars (\$2,200) upon graduation from the program to defray costs for additional job training or education. Juvenile participants are authorized to receive uniforms and clothing items as determined by the staff to be appropriate for effective participation in outdoor activities.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

12-61-126. National Guard Youth Challenge Program — Transportation.

Transportation to support Arkansas National Guard Youth Challenge Program activities for juvenile participants and staff may be provided by commercial lease or purchase of motor vehicles not to exceed six (6) vehicles.

History. Acts 1995, No. 639 § 20; 1997, No. 821, § 24.

A.C.R.C. Notes. Acts 2011, No. 331, § 18, provided: "YOUTH CHALLENGE PROGRAM TRANSPORTATION. Transportation to support Arkansas National Guard Youth Challenge Program activi-

ties for juvenile participants and staff may be provided by commercial lease/purchase of motor vehicles not to exceed six vehicles.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

12-61-128. Civilian Student Training Program — Transportation.

Transportation to support Civilian Student Training Program activities for juvenile participants and staff may be provided by commercial lease or purchase of motor vehicles not to exceed six (6) vehicles.

History. Acts 1995, No. 639, § 19; 1997, No. 821, § 23.

A.C.R.C. Notes. Acts 2011, No. 331, § 16, provided: "CIVILIAN STUDENT TRAINING PROGRAM TRANSPORTATION. Transportation to support Civilian Student Training program activities for

juvenile participants and staff may be provided by commercial lease/purchase of motor vehicles not to exceed six vehicles at Camp Joseph T. Robinson.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

SUBCHAPTER 2 — NATIONAL GUARD GENERALLY

SECTION.

12-61-201. Commanding general of the organized militia.

Effective Dates. Acts 2007, No. 47, § 11: Feb. 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are many members of the Arkansas National Guard and Reserves that are serving in active duty in Iraq and Afghanistan in the war on terror; that it is critical that Arkansas law be updated and be consistent with federal law and rules; and that this act is necessary to eliminate confusion regarding out-dated and inconsistent provisions in the Military Code of

Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-61-201. Commanding general of the organized militia.

(a) The organized militia shall be commanded by a general officer who shall be federally recognized or qualified for federal recognition in a rank not higher than lieutenant general.

(b) He shall be responsible for the military efficiency of the Arkansas organized militia.

History. Acts 1969, No. 50, § 21; A.S.A. 1947, § 11-201; Acts 2007, No. 47, § 4.

substituted "lieutenant general" for "major general" at the end of (a).

Amendments. The 2007 amendment

CHAPTER 62

MILITARY PERSONNEL

SUBCHAPTER.

4. PRIVILEGES.

6. ARKANSAS NATIONAL GUARD TUITION INCENTIVE PROGRAM.

8. MILITARY SERVICE PROTECTION ACT.

SUBCHAPTER 4 — PRIVILEGES

SECTION.

12-62-403. Exemption from civil process.

12-62-405. Immunity of medical personnel from malpractice suits.

SECTION.

12-62-406. Stay of proceedings.

12-62-413. Employment protection for members of armed forces.

Effective Dates. Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary

because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Gov-

ernor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto."

12-62-403. Exemption from civil process.

CASE NOTES

Constitutionality.

Because the parties did not dispute that service of process was improper under this section, which was constitutional, was substantive legislation, and thus, did not violate the separation of powers doctrine in Ark. Const., Art. 4, a circuit court's

continued exercise of jurisdiction over a national guard member was a plain, manifest, clear, and gross abuse of discretion. *Cato v. Craighead County Circuit Court*, 2009 Ark. 334, 322 S.W.3d 484 (2009).

12-62-405. Immunity of medical personnel from malpractice suits.

(a) No physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel, including medical and dental technicians, nursing assistants, and therapists, of the National Guard shall be liable for damages for personal injury, including death caused by negligence or wrongful acts or omission of any such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel, including medical and dental technicians, nursing assistants, and therapists, while acting within the scope of his duties while on official duty as a member of the National Guard.

(b) Any person seeking damages from a physician, dentist, nurse, pharmacist, paramedical, or other supporting personnel, including medical and dental technicians, nursing assistants, and therapists, of the National Guard shall seek the remedies provided against the United States by 28 U.S.C. § 1346(b) if the cause of action arose while the member of the National Guard was in federal service or by filing a claim against the State of Arkansas if the alleged acts were performed by the member of the National Guard while on official state service.

History. Acts 1977, No. 86, § 1; A.S.A. 1947, § 11-1008.1; Acts 2005, No. 1962, § 52.

12-62-406. Stay of proceedings.

(a) All lawsuits pending in any court of this state in which any attorney for either party or any party is a member of the reserve components of the armed forces and who has been ordered to a period of active duty in the armed forces of the State of Arkansas or of the United States, pursuant to a written order issued by the authority of the President of the United States or the Governor of the State of Arkansas, upon written notice to the parties and the court, shall be

stayed for a period of not less than fifteen (15) days preceding the period of active duty and for thirty (30) days following the period of active duty, unless for a time less as requested by the party or attorney. The proceedings shall be stayed without regard to the number of other attorneys also representing parties litigant. Judgments, decrees, sentences, or fines rendered or imposed in violation hereof after written notice for continuance has been filed hereunder shall be void and unenforceable.

(b)(1) This section does not apply to any dependency-neglect actions.

(2) However, in dependency-neglect actions, a member of the National Guard or reserve component of the armed forces of the United States who has been ordered to a period of active duty in the armed forces of the State of Arkansas or the United States pursuant to a written order issued by the authority of the President of the United States or the Governor of the State of Arkansas shall be afforded the protections under the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq., as in effect on February 1, 2011, to the same extent as if his or her duties were for federal military status.

History. Acts 1969, No. 50, § 198; A.S.A. 1947, § 11-1009; Acts 1991, No. 965, § 3; 2009, No. 956, § 30; 2011, No. 1170, § 1.

Amendments. The 2009 amendment added (b) and redesignated the existing text accordingly.

The 2011 amendment rewrote (b).

12-62-413. Employment protection for members of armed forces.

(a) A person who is called to active state duty as a member of the armed forces of this state or any other state, including without limitation the National Guard, a reserve component of the armed forces, or the militia, is afforded such employment and reemployment rights, privileges, benefits, and protections in employment as though that person had been called to active duty in the service of the United States and shall not be denied hiring, retention in employment, promotion, or other incidents or advantages of employment because of any obligation as a member of the armed forces.

(b) In any civil action to enforce the provisions of this section, the prevailing party may be allowed a reasonable attorney's fee to be assessed by the court and collected as costs.

History. Acts 1993, No. 925, § 1; 1993, No. 1036, § 1; 2011, No. 1164, § 2.

Amendments. The 2011 amendment, in (a), substituted "called to active state duty" for "called by the Governor to active state duty," substituted "the armed forces of this state or any other state, including

without limitation the National Guard, a reserve component of the armed forces, or the militia" for "the Arkansas National Guard or as a member of the militia," and substituted "the armed forces" for "the Arkansas National Guard or the militia" at the end.

SUBCHAPTER 6 — ARKANSAS NATIONAL GUARD TUITION INCENTIVE PROGRAM**SECTION.**

12-62-602. Definitions.

12-62-603. Established — Eligibility.

SECTION.

12-62-605. Rules.

Effective Dates. Acts 2009, No. 214, § 2[4]: February 20, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that since September 11, 2001, the country has an increased need for soldiers to fight against terrorism, domestic and abroad; that National Guard members risk their lives to protect and defend our country; that there is a constant need for recruits; and this act will immediately impact recruiting efforts by offering a tuition incentive that is com-

parable to other states. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-62-602. Definitions.

As used in this subchapter:

(1) "Approved institution" means an Arkansas public or private postsecondary institution that is accredited or has achieved candidacy status from the North Central Association Commission on Institutions of Higher Education or is a technical institute or comprehensive lifelong learning center under the supervision of the Department of Career Education;

(2) "Critical military occupation specialty or Air Force skill code" means a military occupation specialty or skill code that has been designated as critical by the Adjutant General, based upon:

(A) The mobilization priority of the unit;

(B) The difficulty of attracting, qualifying, and filling the specialty;

(C) The ability to maintain acceptable strength levels within the specialty; and

(D) Such other factors as the Adjutant General may deem appropriate;

(3)(A) "Eligible service member" means both nonprior service persons and prior service persons who are otherwise qualified to enlist in the Arkansas National Guard and who are enlisting in a critical military occupation specialty or Air Force skill code and who have ten (10) years' service or less.

(B) "Eligible service member" does not include an in-service recruit;

(4) "Qualified applicant" means an eligible service member who:

(A) Has met all requirements for enlistment and has enlisted in a critical military occupation specialty or Air Force skill code;

- (B) Has a sufficient score to be rated as category IIIA or higher based upon scores on standard military tests (score of 50 or higher on the Armed Services Vocational Aptitude Battery or equivalent);
- (C) Meets and continues to meet Good Soldier or Good Airman criteria as set by the Adjutant General; and
- (D) Meets the current scholastic criteria of and is currently enrolled as a full-time student in good standing at an approved institution.

History. Acts 1995, No. 186, § 2; 1995, No. 346, § 2; 2009, No. 214, § 1.

in (3)(A) and (4); rewrote (3)(B), which read: "In-service recruits are not eligible"; and made a minor stylistic change.

Amendments. The 2009 amendment substituted "service member" for "recruit"

12-62-603. Established — Eligibility.

(a)(1) There is established for qualified applicants an Arkansas National Guard Tuition Incentive Program, which shall consist of an annual tuition incentive award of up to five thousand dollars (\$5,000) per eligible service member, payable at two thousand five hundred dollars (\$2,500) per semester for two (2) semesters with payments made directly to the approved institution.

(2) The number of tuition incentive awards shall be limited to the fiscal year appropriation for the program.

(3) Tuition incentive awards must be used at an approved institution.

(4) Tuition incentive awards are available only for payment toward undergraduate studies at an approved institution.

(5) Eligible service members shall complete military training and be awarded a military occupation specialty or Air Force skill code before payment of a tuition incentive award is made.

(b) In order to be eligible for a second semester or subsequent semester tuition incentive award, an eligible service member shall continue as a student in good standing at an approved institution and shall continue as a satisfactory participant in the Arkansas National Guard, meeting Good Soldier or Good Airman requirements as certified by his or her unit commander.

History. Acts 1995, No. 186, § 3; 1995, No. 346, § 3; 2009, No. 214, § 2.

Amendments. The 2009 amendment rewrote the section.

12-62-605. Rules.

(a)(1) The Adjutant General shall establish, implement, and enforce such administrative rules as are necessary for implementation of the Arkansas National Guard Tuition Incentive Program.

(2) The rules shall include criteria for selection from among applicants in those circumstances in which the number of applicants exceeds the fiscal year appropriation for the program.

(b) In establishing rules relating to academic qualification, certification, recertification, and payment, the Adjutant General shall obtain the advice of the Department of Higher Education.

History. Acts 1995, No. 186, § 5; 1995, No. 346, § 5; 2009, No. 214, § 3.

Amendments. The 2009 amendment substituted “rules” for “regulations” in (a)(2) and (b); deleted “and regulations”

following “rules” in (a)(1); and substituted “the fiscal year appropriation for the program” for “three hundred (300) per calendar year” in (b) and changed the section heading.

SUBCHAPTER 7 — ARKANSAS SOLDIERS’ AND AIRMEN’S CIVIL RELIEF ACT

12-62-704. Applicability.

CASE NOTES

Cited: Cato v. Craighead County Circuit Court, 2009 Ark. 334, 322 S.W.3d 484 (2009).

12-62-712. Statutes of limitations affected by military service.

CASE NOTES

Cited: Cato v. Craighead County Circuit Court, 2009 Ark. 334, 322 S.W.3d 484 (2009).

SUBCHAPTER 8 — MILITARY SERVICE PROTECTION ACT

SECTION.

12-62-801. Title.
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SECTION.

12-62-806. Limitation of action.
12-62-807. Retaliation — Interference — Remedies.
12-62-808. Defenses.

Effective Dates. Acts 2005, No. 920, § 2: Mar. 18, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that since September 11, 2001, the country has an increased need for soldiers to protect against terrorist acts and threats to our national security posed by other countries; that members of the National Guard and Reserves risk their lives to protect and defend our country at home and abroad; that military service is honorable and citizens who choose to serve their country deserve respect and to be treated fairly; that members of the Na-

tional Guard and Reserves are being denied employment and being discriminated against in other ways because of their status as soldiers; and that this act is immediately necessary to protect the citizens who choose to honor their country by serving in the military from being denied employment or being discriminated against in other ways because of their military service. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill

is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto

the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-62-801. Title.

This subchapter shall be known and may be cited as the "Military Service Protection Act".

History. Acts 2005, No. 920, § 1.

12-62-802. Definitions.

As used in this subchapter:

(1)(A) "Back pay" means the amount of compensation that an employee would have earned if the employer had not engaged in conduct prohibited under this subchapter.

(B) "Back pay" shall not include any compensation that would have been earned before two (2) years from the date that the cause of action permitted under this subchapter is initially filed;

(2) "Compensatory damages" means damages for:

(A) Back pay and interest on back pay;

(B) Mental anguish;

(C) Loss of dignity; or

(D) Other intangible injuries;

(3)(A) "Employee" means a person who performs work or service of any type for compensation on a full-time or part-time basis.

(B) "Employee" includes an applicant for a position to perform work or service for compensation.

(C) "Employee" does not include:

(i) Any individual employed by his or her parents, spouse, or child;

(ii) An individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility;

(iii) An individual employed outside the State of Arkansas; or

(iv) An independent contractor;

(4) "Employer" means a person or entity who employs five (5) or more employees in the State of Arkansas in each of twenty (20) or more calendar weeks in the current or preceding calendar year before the cause of action arose, or any agent of the person;

(5) "Military service" means current honorable service or honorable discharge from service within six (6) months from the date of the alleged discrimination in any active or reserve component of the United States armed forces; and

(6) "Religious organization" means a church or other place of worship that:

(A) Is located in the state; and

(B) Provides religious services to its congregation.

History. Acts 2005, No. 920, § 1.

12-62-803. Applicability.

- (a)(1) This subchapter shall not be applicable to any of the following:
- (A) The State of Arkansas;
 - (B) A state agency;
 - (C) A political subdivision;
 - (D) A city of the first class, a city of the second class, or an incorporated town;
 - (E) A county;
 - (F) A school district;
 - (G) A public official; or
 - (H) An agency, commission, board, committee, council, or department of any of the entities stated in this subdivision (a)(1).
- (2) This subchapter shall not be construed as creating a cause of action against an entity stated in subdivision (a)(1) of this section.
- (b) The provisions of this subchapter relating to employment shall not be applicable with respect to employment by a religious organization or other religious entity.
- (c) This subchapter shall not apply to matters regulated by the Arkansas Insurance Code or the Trade Practices Act, § 23-66-201 et seq.

History. Acts 2005, No. 920, § 1.

the Arkansas Insurance Code, see note at

Publisher's Notes. For codification of § 23-60-101.

12-62-804. Construction.

- (a) Nothing in this subchapter shall be construed to waive the sovereign immunity of the State of Arkansas.
- (b)(1) When construing this subchapter as it relates to employment matters, a court may look for guidance to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq., as in effect on January 1, 2005, as well as federal decisions interpreting the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq., as in effect on January 1, 2005.
- (2) When construing this subchapter as it relates to all other matters, a court may look for guidance to state and federal decisions interpreting the Civil Rights Act of 1871, 42 U.S.C. § 1983, as in effect on January 1, 2005.

History. Acts 2005, No. 920, § 1.

12-62-805. Rights stated — Cause of action created.

- (a)(1) The right of an otherwise qualified person to be free from discrimination because of military service is recognized as and declared to be a civil right.

(2) This right shall include, but not be limited to:

(A) The right to obtain and hold employment without discrimination;

(B) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(C) The right to engage in property transactions without discrimination;

(D) The right to engage in credit and other contractual transactions without discrimination; and

(E) The right to vote and participate fully in the political process.

(b) A person who is injured by an intentional act of discrimination in violation of subsection (a) of this section may bring a civil action in a circuit court of competent jurisdiction.

(c)(1) An employee who is discriminated against by an employer in violation of subdivision (a)(2)(A) of this section may bring a civil action in a circuit court of competent jurisdiction.

(2) The employee may seek back pay and interest on back pay in addition to the other remedies provided for under this section.

(d)(1) Subject to the limitations on damages in subdivision (d)(2) of this section, a person may seek the following relief for a violation of a civil right under this subchapter:

(A) An order prohibiting the discriminatory practice;

(B) Affirmative relief from the effects of the practice, including, but not limited to, reemployment;

(C) An injunction to enjoin further violations;

(D) An order to recover compensatory and punitive damages; and

(E) An order to recover the cost of litigation and a reasonable attorney's fee, in the discretion of the court.

(2) The total compensatory and punitive damages awarded under this section shall not exceed:

(A) The sum of fifteen thousand dollars (\$15,000) in the case of an employer who employs no fewer than five (5) but fewer than fifteen (15) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year before the cause of action arose;

(B) The sum of fifty thousand dollars (\$50,000) in the case of an employer who employs more than fourteen (14) but fewer than one hundred one (101) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year before the cause of action arose;

(C) The sum of one hundred thousand dollars (\$100,000) in the case of an employer who employs more than one hundred (100) but fewer than two hundred one (201) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year before the cause of action arose;

(D) The sum of two hundred thousand dollars (\$200,000) in the case of an employer who employs more than two hundred (200) but fewer than five hundred one (501) employees in each of twenty (20) or

more calendar weeks in the current or preceding calendar year before the cause of action arose; and

(E) The sum of three hundred thousand dollars (\$300,000) in the case of an employer who employs more than five hundred (500) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year before the cause of action arose.

History. Acts 2005, No. 920, § 1.

12-62-806. Limitation of action.

(a) Except as provided under subsection (b) of this section, an action under this subchapter shall be brought within one (1) year after the alleged violation or discriminatory conduct occurs.

(b) However, if a service member is deployed for active duty at any time during the one-year period, then an action under this subchapter shall be brought within one (1) year after the end of his or her mobilization.

History. Acts 2005, No. 920, § 1.

12-62-807. Retaliation — Interference — Remedies.

(a) It is unlawful under this subchapter for a person or entity to retaliate or discriminate against a person because the person in good faith:

(1) Opposed any act or practice made unlawful under this subchapter; or

(2) Made a claim, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) It is unlawful to coerce, intimidate, threaten, or interfere with a person in his or her exercise of any right granted or protected under this subchapter.

(c) A person may avail himself or herself of the same procedures and remedies available under § 12-62-805 for violations of this section.

History. Acts 2005, No. 920, § 1.

12-62-808. Defenses.

(a) It is a defense under this subchapter if an employer establishes that the employer's actions were based on legitimate, nondiscriminatory factors and not on reasons related to military service.

(b) Provided the conduct at issue is based on a bona fide business judgment and is not a pretext for discrimination that is prohibited under this subchapter, this subchapter shall not be construed to prohibit or restrict:

(1) An insurer, hospital, medical service company, health maintenance organization, or any agent or entity that administers benefit plans or any bank, savings and loan, or other lender from underwriting

insurance or lending risks or administering such risks that are based on or are not inconsistent with federal or state law;

(2) A person covered by this subchapter from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or are not inconsistent with federal or state law; or

(3) A person covered by this subchapter from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that is not subject to federal or state laws that regulate insurance.

History. Acts 2005, No. 920, § 1.

CHAPTER 64

MILITARY JUSTICE

SUBCHAPTER.

3. NONJUDICIAL PUNISHMENT.
4. COURTS-MARTIAL.
6. SENTENCING.
8. PUNITIVE ARTICLES.

SUBCHAPTER 3 — NONJUDICIAL PUNISHMENT

SECTION.

12-64-301. Nonjudicial punishment generally.

Effective Dates. Acts 2007, No. 47, § 11: Feb. 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are many members of the Arkansas National Guard and Reserves that are serving in active duty in Iraq and Afghanistan in the war on terror; that it is critical that Arkansas law be updated and be consistent with federal law and rules; and that this act is necessary to eliminate confusion regarding out-dated and inconsistent provisions in the Military Code of

Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-64-301. Nonjudicial punishment generally.

(a) Under such regulations as the Governor may prescribe, a company grade commanding officer may, in addition to or in lieu of admonition or reprimand, impose not more than two (2) of the following

disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) Upon officers of his command:

(A) Withholding of privileges for not more than two (2) consecutive weeks;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than two (2) consecutive weeks; or

(C)(i) A fine or a forfeiture in an amount that does not exceed ten (10) days of the officer's base pay.

(ii) The payment or collection of the fine or the withholding of the forfeiture under this subdivision (a)(1)(C) shall not exceed an amount equal to five (5) days of base pay during any calendar month; or

(2) Upon other military personnel of his command:

(A) Withholding of privileges for not more than two (2) consecutive weeks;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than two (2) consecutive weeks;

(C) Extra duties for not more than two (2) consecutive weeks and not to exceed two (2) hours per day, holidays included;

(D) Reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command;

(E) If imposed upon a person attached to or embarked in a vessel, confinement for not more than seven (7) consecutive days; or

(F)(i) A fine or a forfeiture in an amount that does not exceed ten (10) days of the soldier's or airman's base pay.

(ii) The payment or collection of the fine or the withholding of the forfeiture under this subdivision (a)(2)(F) shall not exceed an amount equal to five (5) days of base pay during any calendar month.

(b) Under such regulations as the Governor may prescribe, a field grade commanding officer may, in addition to or in lieu of admonition or reprimand, impose not more than two (2) of the following disciplinary punishments for a minor offense without the intervention of a court-martial:

(1) Upon officers of his command:

(A) Withholding of privileges for not more than two (2) consecutive weeks;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than two (2) consecutive weeks; or

(C)(i) A fine or a forfeiture in an amount that does not exceed thirty (30) days of the officer's base pay.

(ii) The payment or collection of the fine or the withholding of the forfeiture under this subdivision (b)(1)(C) shall not exceed an amount equal to fifteen (15) days of base pay during any calendar month; or

(2) Upon other military personnel of his command:

(A) Withholding of privileges for not more than two (2) consecutive weeks;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than two (2) consecutive weeks;

- (C) Extra duties for not more than two (2) consecutive weeks and not to exceed two (2) hours per day, holidays included;
- (D) Reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command;
- (E) If imposed upon a person attached to or embarked in a vessel, confinement for not more than seven (7) consecutive days; or
- (F)(i) A fine or a forfeiture in an amount that does not exceed thirty (30) days of the soldier's or airman's base pay.
- (ii) The payment or collection of the fine or the withholding of the forfeiture under this subdivision (b)(2)(F) shall not exceed an amount equal to fifteen (15) days of base pay during any calendar month.
- (c) However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this subchapter if the member has, before the imposition of the punishment, demanded trial by court-martial in lieu of the punishment.
- (d) The Governor may, by regulation, place limitations on the powers granted by this subchapter with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.
- (e) A field grade officer in charge or executive officer of a detached unit or section may, for minor offenses, impose on officers, soldiers, or airmen assigned to the unit of which he is in charge such of the punishment authorized to be imposed by commanding officers as the Governor may by regulation specifically prescribe, as provided in subsections (a), (b), (c), and (d) of this section.
- (f) Whenever nonjudicial punishment of forfeiture of an amount of base pay is imposed under this section, the forfeiture may apply to the base pay only and before any deduction, withholding, assignment, or forfeiture then due or becoming due on or after the date that punishment is imposed and to any pay accrued before that date.

History. Acts 1969, No. 50, § 59; 1981, No. 656, § 1; 1985, No. 670, § 7; A.S.A. 1947, § 11-614; Acts 2007, No. 47, § 5.

Amendments. The 2007 amendment substituted "a company grade" for "any" in the introductory language of (a); rewrote (a)(1)(C) and (a)(2)(F); inserted present (b) and redesignated the remaining subsec-

tions accordingly; in (e), substituted "A field grade" for "An" at the beginning, inserted "or executive officer of a detached unit or section," substituted "officers, soldiers, or airmen" for "enlisted members," and substituted "(c), and (d)" for "and (c)" and rewrote (f).

SUBCHAPTER 4 — COURTS-MARTIAL

SECTION.

12-64-403. Jurisdiction of general courts-martial.

12-64-404. Jurisdiction of special courts-martial.

SECTION.

12-64-405. Jurisdiction of summary courts-martial.

Effective Dates. Acts 2007, No. 47, § 11: Feb. 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are many members of the Arkansas National Guard and Reserves that are serving in active duty in Iraq and Afghanistan in the war on terror; that it is critical that Arkansas law be updated and be consistent with federal law and rules; and that this act is necessary to eliminate confusion regarding out-dated and inconsistent provisions in the Military Code of

Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-64-403. Jurisdiction of general courts-martial.

Subject to § 12-64-402, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the Governor may prescribe, adjudge any of the following punishments:

- (1) A fine or forfeiture in an amount that shall not exceed two hundred (200) days of the service member's base pay and allowances;
- (2) Confinement with hard labor for not more than two hundred (200) days;
- (3) Dishonorable discharge, bad conduct discharge, or dismissal;
- (4) Reprimand;
- (5) Reduction of enlisted persons to a lower grade; or
- (6) Any combination of these punishments.

History. Acts 1969, No. 50, § 62; 1985, No. 670, § 8; A.S.A. 1947, § 11-617; Acts 2007, No. 47, § 8.

Amendments. The 2007 amendment rewrote (1).

12-64-404. Jurisdiction of special courts-martial.

(a) Subject to § 12-64-402, special courts-martial shall have jurisdiction to try persons subject to this code for any offense for which they may be punished under this code.

(b) A special court-martial may adjudge any punishment that a general court-martial may adjudge except for the following punishments:

- (1) Dishonorable discharge;
- (2) Dismissal;
- (3) Confinement with hard labor for more than one hundred (100) days; or
- (4) A fine or forfeiture of pay and allowances in an amount that exceeds one hundred (100) days of the service member's base pay and allowances.

History. Acts 1969, No. 50, § 63; 1985, No. 670, § 8; A.S.A. 1947, § 11-618; Acts 2007, No. 47, § 9.

Amendments. The 2007 amendment, in the introductory language of (b), inserted "that" following "punishment," added "for the following punishments" at the end and made a minor punctuation change; made stylistic and punctuation

changes in (b)(1) through (b)(3); and in (b)(4), added "A fine or" at the beginning and substituted "in an amount that exceeds one hundred (100) days of the service member's base pay and allowances" for "of more than two hundred dollars (\$200), or a fine of more than two hundred dollars (\$200)."

12-64-405. Jurisdiction of summary courts-martial.

(a) Subject to § 12-64-402, summary courts-martial have jurisdiction to try persons subject to this code, except officers and warrant officers, for any offense made punishable by this code.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to a trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate.

(c) Summary courts-martial may adjudge any of the following punishments:

- (1) Confinement with hard labor not exceeding twenty-five (25) days;
- (2) A fine or forfeiture of pay and allowances in an amount that shall not exceed one hundred (100) days of the service member's base pay and allowances;
- (3) Reprimand;
- (4) Reduction of enlisted persons to a lower grade; or
- (5) Any combination of these punishments.

History. Acts 1969, No. 50, § 64; 1981, No. 656, § 2; 1985, No. 670, § 8; 1985 (1st Ex. Sess.), No. 9, § 1; A.S.A. 1947, § 11-619; Acts 2007, No. 47, § 10.

Amendments. The 2007 amendment substituted "or forfeiture of pay and allowances in an amount that shall not exceed

one hundred (100) days of the service member's base pay and allowances" for "of not more than one hundred dollars (\$100)" in (c)(2); deleted former (c)(3) and redesignated the remaining subsections accordingly; substituted "or" for "and" at the end of (c)(4); and added (c)(5).

SUBCHAPTER 6 — SENTENCING

SECTION.

12-64-609. Fines and forfeitures.

Effective Dates. Acts 2007, No. 47, § 11: Feb. 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are many members of the Arkansas National Guard and Reserves that are serving in active duty in Iraq and Afghanistan in the war on terror; that it is critical that Arkansas law be updated and

be consistent with federal law and rules; and that this act is necessary to eliminate confusion regarding out-dated and inconsistent provisions in the Military Code of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by

the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-64-609. Fines and forfeitures.

(a) Fines may be paid to a military court or to an officer executing its process.

(b)(1) The amount of a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until the fine is liquidated.

(2) Any sum so deducted shall be turned in to the military court which imposed the fine and shall be paid over by the officer receiving it in like manner as provided for other fines and moneys collected under a sentence of a summary court-martial.

(c)(1) Notwithstanding any other law, a fine or penalty imposed by a military court upon an officer or enlistee shall be paid by the officer collecting it within thirty (30) days to the Treasurer of State of Arkansas and shall become a part of, be credited to, and be spent from, the State Military Department Fund.

(2) The Treasurer of State shall then report the amount thereof to the Adjutant General and shall pay it over in appropriate warrant.

(d) If a punishment of fine or forfeiture of an amount of base pay and allowance is imposed by a court-martial, the amount of the fine or forfeiture shall apply to any type or category of pay and allowances then due or becoming due on or after the date that the punishment is imposed before any deduction, withholding, assignment, previous forfeiture, or collection from the pay and allowances, and to any pay and allowances accrued before that date.

History. Acts 1969, No. 50, § 171; A.S.A. 1947, § 11-682; Acts 2007, No. 47, § 6.

Amendments. The 2007 amendment added "and forfeitures" at the end of the

section heading; deleted "the" following "Treasurer of" in (c)(1); in (c)(2), deleted "the" preceding "State" and deleted "of the State" following "General"; and added (d).

SUBCHAPTER 8 — PUNITIVE ARTICLES

SECTION.

12-64-844. General article — Offenses cognizable by courts-martial.

12-64-845. Sexual misconduct.

SECTION.

12-64-846. Sexual harassment.

12-64-847. Use or possession of a controlled substance.

Effective Dates. Acts 2007, No. 47, § 11: Feb. 1, 2007. Emergency clause pro-

vided: "It is found and determined by the General Assembly of the State of Arkan-

sas that there are many members of the Arkansas National Guard and Reserves that are serving in active duty in Iraq and Afghanistan in the war on terror; that it is critical that Arkansas law be updated and be consistent with federal law and rules; and that this act is necessary to eliminate confusion regarding out-dated and inconsistent provisions in the Military Code of Arkansas. Therefore, an emergency is declared to exist and this act being neces-

sary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-64-844. General article — Offenses cognizable by courts-martial.

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia, all conduct of a nature to bring discredit upon the organized militia, and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

History. Acts 1969, No. 50, § 162; 1983, No. 412, § 3; A.S.A. 1947, § 11-744; Acts 2007, No. 47, § 7.

Amendments. The 2007 amendment deleted former (b) and made a related change.

12-64-845. Sexual misconduct.

(a) Any person subject to this code who attempts or offers to cause bodily harm to another person through sexual contact with unlawful force, abuse of authority, or violence is guilty of sexual misconduct and shall be punished as a court-martial may direct.

(b) Whether the attempt or offer with or without consent is consummated does not affect the conduct prescribed under this section.

History. Acts 2009, No. 207, § 1.

12-64-846. Sexual harassment.

Any person subject to this code shall be punished as a court-martial may direct if he:

- (1) Engages in behavior that involves unwelcome sexual advances;
- (2) Requests sexual favors; or
- (3) Engages in other verbal or physical conduct of a sexual nature if
 - (A) Submission to or rejection of the conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;
 - (B) Submission to or rejection of the conduct by a person is used as a basis for career or employment decisions affecting that person; or

(C) The conduct has the purpose or effect of unreasonably interfering with a person's work performance or creates an intimidating, hostile, or offensive working environment.

History. Acts 2009, No. 207, § 1.

12-64-847. Use or possession of a controlled substance.

(a) As used in this section, "controlled substance" means:

- (1) Amphetamine;
- (2) Cocaine;
- (3) Heroin;
- (4) Lysergic acid diethylamide;
- (5) Marijuana;
- (6) Methamphetamine;
- (7) Opium;
- (8) Phencyclidine;

(9) Barbituric acid, including phenobarbital and secobarbital; or

(10) Any substance that is included in Schedules I through VI established by the Controlled Substances Act of 1970, 21 U.S.C. § 812, or the Uniform Controlled Substances Act, § 5-64-101 et seq.

(b) A person subject to this code who wrongfully uses, is under the influence of, or possesses a controlled substance shall be punished as a court-martial may direct.

(c) A person subject to this code who wrongfully possesses the metabolites of a controlled substance in his or her blood or urine shall be punished as a court-martial may direct.

History. Acts 2011, No. 820, § 1.

SUBTITLE 5. EMERGENCY MANAGEMENT

CHAPTER 75

ARKANSAS EMERGENCY SERVICES ACT OF 1973

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. EMPLOYEES.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-75-102. Policy and purposes.
- 12-75-103. Definitions.
- 12-75-105. [Repealed.]
- 12-75-106. Enforcement.
- 12-75-107. Declaration of disaster emergencies.
- 12-75-108. Local disaster emergencies — Declaration.

SECTION.

- 12-75-109. Arkansas Department of Emergency Management — Establishment — Personnel.
- 12-75-110. Arkansas Department of Emergency Management — State emergency operations plan.

SECTION.

- 12-75-111. Arkansas Department of Emergency Management — Other powers and duties.
- 12-75-112. Communications networks.
- 12-75-113. Emergency response vehicles.
- 12-75-114. Governor — Disaster emergency responsibilities.
- 12-75-115. Disaster prevention generally.
- 12-75-116. State and local governmental entities — Liaison officers.
- 12-75-117. Interjurisdictional disaster planning and service areas.
- 12-75-118. Local and interjurisdictional offices of emergency management and services.
- 12-75-119. Statewide mutual aid system.
- 12-75-120. [Repealed.]

SECTION.

- 12-75-121. Utilization of existing services and facilities.
- 12-75-122. Political activity prohibited.
- 12-75-123. Appropriations and authority to accept services, gifts, grants, and loans.
- 12-75-124. Compensation for services and property.
- 12-75-125. Public safety officers.
- 12-75-127. [Repealed.]
- 12-75-128. Emergency responders — Immunities and exemptions.
- 12-75-129. Emergency responders — Workers' compensation benefits.
- 12-75-132. Arkansas Homeland Security Advisory Group — Created.
- 12-75-133. Position transfer.

A.C.R.C. Notes. Acts 2003, No. 1366, as amended by Acts 2005, No. 1823, §§ 1 and 2, Acts 2007, No. 432, § 1, Acts 2009, No. 560, § 1, and Acts 2011, No. 723, § 1, provides: "SECTION 1. Findings.

The Arkansas General Assembly finds that:

"(1) The threat of terrorism and the use of weapons of mass destruction has become a reality in the United States and the State of Arkansas, the emergency service agencies of state and local government have had to assume the new and serious responsibilities of protecting the citizenry from these threats from both domestic and international sources;

"(2) It is incumbent upon emergency service agencies of this state to assess vulnerabilities, make plans, and develop operational procedures to prevent, investigate, and respond to these threats; and

"(3) It is of the utmost importance that those who may engage in acts of terrorism or employ weapons of mass destruction against the people and property of this state not have access to the information designed to prevent and defeat them.

"SECTION 2. Definitions.

"As used in this act:

"(1) 'Catastrophe' means a man-made event that causes disastrous property damage, death, or serious physical injury to multiple people by explosion, fire, flood, avalanche, collapse of building, distribution of poison, radioactive material, bacte-

ria, virus, or other dangerous and difficult to confine force or substance;

"(2) 'Emergency service agency' means an agency or department of the State of Arkansas or any county or city that has first responder or investigative responsibilities in the event of a catastrophe or use of a weapon of mass destruction; and

"(3) 'Weapon of mass destruction' means an explosive, chemical, radioactive, or biological agent, or any other substance or device capable of causing extensive property damage, death, or serious physical injury to multiple persons in a single act or series of acts;

"SECTION 3. Threat assessments and plans.

"(a)(1) The threat assessments, plans, operational policies or procedures, and training developed or maintained by any emergency service agency for the purpose of preventing, investigating, or responding to a catastrophe or use of weapons of mass destruction are not subject to public disclosure as public records except if the disclosure is determined in the best public interest by the head of the emergency service agency.

"(2) Any document or information received by an emergency service agency from an agency of the United States government, another state, or its political subdivisions that is not subject to disclosure under the laws governing the source agency is not subject to public disclosure

as a public record from the Arkansas agency.

(3) Investigative files of emergency service agencies relating to a catastrophe or use of a weapon of mass destruction are not subject to public disclosure until after final adjudication.

“SECTION 4. Sunset Clause.

“This act expires on July 1, 2015.”

Effective Dates. Acts 2007, No. 751, § 38: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act dissolves and transfers the duties of the Executive Chief Information Officer, Chief Information Officer, and Office of Information Technology; and that dissolving the offices at the beginning of the state’s fiscal year will result in a more efficient transfer of responsibilities and funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public

peace, health, and safety shall become effective on July 1, 2007.”

Acts 2007, No. 1290, § 95: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007.”

12-75-102. Policy and purposes.

(a) Because of the existing and increasing possibility of the occurrence of a major emergency or a disaster of unprecedented size and destructiveness resulting from enemy attack, natural or human-caused catastrophes, or riots and civil disturbances and in order to ensure that this state will be prepared to deal with such contingencies in a timely, coordinated, and efficient manner and generally to provide for the common defense and protect the public peace, health, safety and preserve the lives and property of the state, it is found and declared to be necessary to:

(1) Create from the present Office of Emergency Services and current adjunct offices the Arkansas Department of Emergency Management and authorize and direct the creation of comparable local organizations within the political subdivisions of the state;

(2) Confer upon the Governor and upon the executive heads of the political subdivisions of the state the emergency powers provided herein;

(3) Provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to carrying out emergency management functions;

(4) Direct the establishment of emergency management liaison offices within each state department and agency with an emergency management role or responsibility; and

(5) Provide for workers’ compensation benefits for emergency management workers performing emergency management operations.

(b) It is further declared to be the purpose of this chapter and the policy of the state to authorize and provide for a disaster management system embodying all aspects of predisaster preparedness and post-disaster response by requiring all:

(1) State and local government offices to coordinate emergency management activities through the department in order to coordinate personnel, equipment, and resources for the most effective and economical use; and

(2) Emergency management-related functions of this state be coordinated to the maximum extent with comparable functions of the federal government, including its various departments and agencies, with other states and localities, and with private agencies of every type, to the end that the most effective preparation and use may be made of the state and national personnel, resources, and facilities for dealing with any disaster that may occur.

(c)(1) The protection of lives and property is the responsibility of all levels of government.

(2) Except as noted in this chapter, county and municipal governments bear primary responsibility for initial actions and activities related to disaster preparedness, response, and recovery for the county and the municipalities in the county through their local offices of emergency management, with support from the department.

(d)(1)(A) When events have exceeded, or will exceed, local government's ability to respond or recover without state assistance, the chief executive officer shall declare a local state of disaster or emergency as prescribed in this chapter to signify his or her intent to request resources of the state or federal government, or both.

(B) Where time constraints are critical to the saving of lives and property, the local chief executive officer may verbally declare a local state of disaster or emergency to the Director of the Arkansas Department of Emergency Management, to be followed by a written declaration as soon as practicable.

(2)(A) Only upon such declaration may the resources of the state be provided, and then may the state request that the assistance and resources of the federal government be provided, unless and except where the magnitude of the disaster is of such severity that the functions of local government have ceased or the chief executive officer of the municipal or county government, or both, and his or her designated successor have become incapacitated.

(B) Under such conditions the Governor may declare a state of disaster or emergency on behalf of the specified local jurisdiction and direct emergency functions until such time as local government is restored.

History. Acts 1973, No. 511, § 2; 1981, No. 891, § 1; 1985, No. 687, § 1; 1985, No. 978, § 1; A.S.A. 1947, § 11-1935; Acts 1999, No. 646, §§ 4-6; 2007, No. 197, § 1; 2009, No. 165, §§ 15-19.

A.C.R.C. Notes. The reference in subdivision (a)(1) of this section to the "present Office of Emergency Services" is a reference to the former State Office of Emergency Services which was renamed

the Arkansas Department of Emergency Management by Acts 1999, No. 646, § 1.

Amendments. The 2007 amendment, in (a)(4), substituted “emergency management” for “emergency services,” and inserted “with an emergency management role or responsibility”; and substituted “coordinate” for “manage” in (b)(1).

The 2009 amendment substituted “management” for “service” in (a)(3) and

twice in (a)(5); in (b)(2), substituted “management-related” for “service-related” and “personnel” for “manpower”; inserted “Except as noted in this chapter” in (c)(2); substituted “this chapter” for “this subchapter” in (d)(1)(A); and made related and stylistic changes.

12-75-103. Definitions.

As used in this chapter:

(1) “Chief executive” means a head of government, the Governor, a county judge, and a mayor or city manager of incorporated places, dependent on the form and level of government;

(2) “Disaster” means any tornado, storm, flood, high water, earthquake, drought, fire, radiological incident, air or surface-borne toxic or other hazardous material contamination, or other catastrophe, whether caused by natural forces, enemy attack, or any other means which:

(A) In the determination of the Governor or the Director of the Arkansas Department of Emergency Management or his or her designee is or threatens to be of sufficient severity and magnitude to warrant state action or to require assistance by the state to supplement the efforts and available resources of local governments and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, and with respect to which the chief executive of any political subdivision in which the disaster occurs or threatens to occur certifies the need for state assistance and gives assurance of the local government for alleviating the damage, loss, hardship, or suffering resulting from such disaster; or

(B)(i) Results in an interruption in the delivery of utility services when emergency declarations are required and when delays in obtaining an emergency declaration from the Governor or the director or his or her designee would hamper and delay restoration of utility service.

(ii) In those instances, the Governor or the director or his or her designee may make such emergency determination subsequent to the initiation of the restoration work;

(3) “Emergency jurisdiction” means any one (1) of the seventy-five (75) counties or specified local offices of emergency management or interjurisdictional offices of emergency management in the state;

(4)(A) “Emergency management” means disaster or emergency preparedness, mitigation, response, recovery, and prevention by state and local governments other than functions for which military forces are primarily responsible to prevent, minimize, and repair injury and damage resulting from major emergencies or from disasters caused by enemy attack, domestic or foreign terrorist attacks, natural causes, human-made catastrophes, or civil disturbances.

(B) These functions include, without limitation:

(i) Fire fighting;

(ii) Law and order;

(iii) Medical and health;

(iv) Rescue;

(v) Engineering;

(vi) Warning;

(vii) Communications;

(viii) Radiological, chemical, biological, or other special material identification, measurement, and decontamination;

(ix) Evacuation or relocation of persons from stricken areas;

(x) Emergency social services such as housing, feeding, and locator services;

(xi) Emergency transportations;

(xii) Plant protection;

(xiii) Damage assessment and evaluation;

(xiv) Temporary restoration of public facilities;

(xv) Emergency restoration of publicly owned utilities, or privately owned utilities serving the public good;

(xvi) Debris clearance;

(xvii) Hazard vulnerability and capability analysis; and

(xviii) Other functions related to the protection of the people and property of the state, together with all other activities necessary or incidental to the preparedness, mitigation, response, recovery, and prevention for all the functions in this subdivision (4)(B);

(5) "Emergency management requirements" means specific actions, activities, and accomplishments required for funding of state offices of emergency management or established local offices of emergency management, or both, under applicable state and federal emergency management program guidance and regulations;

(6) "Emergency management standards" means standards of training, education, and performance established by the director for employees of the state offices of emergency management and established local offices of emergency management designed to ensure competency and professionalism and to determine minimum qualifications for the receipt of federal or state emergency management funding, or both;

(7)(A) "Emergency responder" means any paid or volunteer person or entity:

(i) With special skills, qualifications, training, knowledge, or experience in the public or private sectors that would be beneficial to an emergency jurisdiction in an emergency declared under § 12-75-108 or training exercises authorized by the United States Department of Homeland Security, the Arkansas Department of Emergency Management, or an emergency jurisdiction; and

(ii) Who is:

(a) Requested by a participating emergency jurisdiction to respond or assist with a declared emergency or with authorized training exercises;

(b) Authorized to respond or assist a participating emergency jurisdiction with a declared emergency or with authorized training exercises; or

(c) Both requested and authorized to respond or assist a participating emergency jurisdiction with a declared emergency or with authorized training exercises.

(B) An emergency responder may include, without limitation, the following types of personnel:

- (i) Law enforcement officers;
 - (ii) Firefighters;
 - (iii) Hazardous material response personnel;
 - (iv) Decontamination response personnel;
 - (v) Certified bomb technicians;
 - (vi) Emergency medical services personnel;
 - (vii) Physicians;
 - (viii) Nurses;
 - (ix) Public health personnel;
 - (x) Emergency management personnel;
 - (xi) Public works personnel;
 - (xii) Members of community emergency response teams;
 - (xiii) Emergency personnel of nongovernmental organizations;
- and
- (xiv) Persons with specialized equipment operations skills or training or any other skills valuable to responding or assisting a participating emergency jurisdiction with a declared emergency or with authorized training exercises;

(C) "Emergency responder" includes any full-time or part-time paid, volunteer, or auxiliary employee of the state, another state, a territory, a possession, the District of Columbia, the federal government, any neighboring country, or any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this state subject to the order or control of, or pursuant to, a request of the state government or any political subdivision;

(8) "Governing body" means a county quorum court, a city council, and a city board of directors;

(9)(A) "Hazard mitigation assistance" means funds and programs to correct, alleviate, or eliminate a condition or situation which poses a threat to life, property, or public safety from the effects of a disaster.

(B) Hazard mitigation assistance may include, but is not limited to, raising, replacing, removing, rerouting, or reconstructing existing public facilities such as roads, bridges, buildings, equipment, drainage systems, or other public or private nonprofit property, as defined in the Disaster Relief Act of 1974, 38 U.S.C. § 3720 and 42 U.S.C. § 5121 et seq.;

(10) "Individual assistance" means funds and programs to provide for the immediate needs, including, but not limited to, food, clothing, and shelter for individuals and families;

(11)(A) "Interjurisdictional agreement" means a mutual agreement between two (2) or more established local offices of emergency management that is approved by executive order of the Governor in accordance with this chapter to merge, integrate, or otherwise combine the functions of the respective established local offices of emergency management for more effective, economical, and efficient use of available personnel and resources.

(B) An interjurisdictional agreement shall include specific provisions addressing the appointment, funding, administration, and operational control of the emergency management coordinator and staff of the interjurisdictional office of emergency management;

(12) "Interjurisdictional office of emergency management" means an office of emergency management formed by two (2) or more local offices of emergency management under an interjurisdictional agreement;

(13) "Local office of emergency management" means a county or municipal office of emergency management created and established in accordance with the provisions of this chapter to perform local emergency management functions within the existing political subdivisions of the state;

(14) "Major emergency" means a condition which requires the activation of emergency response at the state or local levels, either in anticipation of a severe disaster such as an imminent enemy attack, potential civil disturbance, forecast major natural or human-caused disaster, or actual onset of conditions requiring the use of such forces which exceed the day-to-day response and activities of such forces and requires the coordinating of a complement of local, state, federal, or volunteer organizations;

(15)(A)(i) "Operational control" means the assigning of missions and the exercising of immediate command and overall management of all resources committed by state or local government to a disaster operation or major emergency.

(ii) Unless otherwise delegated by executive order, the chief executive of the state or local governments, the director, or head of the local office of emergency management as the chief executive's direct representative will exercise operational control of the occurrence and assign missions.

(B) Each agency, department, or organization will exercise control and authority over its personnel and resources to accomplish the assigned mission.

(C)(i) Each agency, department, or organization will coordinate activities through the department or local office of emergency management exercising operational control of the occurrence.

(ii) Operational control does not imply, nor is it intended to include, administrative management, which will remain with the parent organization;

(16) "Participating emergency jurisdiction" means an emergency jurisdiction participating in the statewide mutual aid system established in § 12-75-119;

(17) "Political subdivision" means all duly formed and constituted governing bodies created and established under the authority of the Arkansas Constitution and laws of this state;

(18) "Public assistance" means funds and programs to make emergency repairs or restoration of public facilities, to include, but not be limited to, publicly owned or maintained facilities such as roads, streets, bridges, utilities, schools, and other structures and facilities;

(19)(A) "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides firefighting and rescue, natural or human-caused disaster or major emergency response, law enforcement, and ambulance or emergency medical services.

(B) State offices of emergency management and local offices of emergency management are considered in the context and definition of public safety agencies for performance or coordination of functions defined as emergency management to the extent necessary for mitigation of, planning for, response to, and recovery from disasters or major emergencies;

(20) "Public safety officer" means those positions of state offices of emergency management and local offices of emergency management approved by the director in state and local staffing patterns and authorized by him or her to perform or coordinate emergency management functions to the extent necessary for mitigation of, planning for, response to, recovery from, or prevention of disasters or major emergencies within limitations of this chapter;

(21) "Response assistance" means funds to defray the costs of response to an emergency that does not necessarily result in a disaster of the magnitude and scope described in this section, but which requires the deployment and utilization of state and local government and private emergency personnel, equipment, and resources to protect and preserve lives and property and for the welfare of the citizens of Arkansas; and

(22) "Utility services" means the transmission of communications or the transmission, distribution, or delivery of electricity, water, or natural gas for public use.

History. Acts 1973, No. 511, § 3; 1985, No. 629, § 1; 1985, No. 687, § 2; 1985, No. 978, § 2; A.S.A. 1947, § 11-1936; Acts 1993, No. 1049, §§ 1, 2; 1995, No. 116, § 1; 1999, No. 646, §§ 7-11; 1999, No. 913, § 1; 2005, No. 1179, § 1; 2007, No. 197, § 2; 2009, No. 165, §§ 20-27.

Amendments. The 2007 amendment deleted former (1), (9), (16), (22)(B) and (23)(C), and redesignated the remaining subdivisions accordingly; substituted "emergency management" for "emergency services" throughout the section; inserted "or specified local offices of emergency management or interjurisdictional offices

of emergency management" in present (3); inserted "and prevention" in present (4)(A) and (4)(B)(xviii); inserted "paid or volunteer" in present (7)(A); substituted "an emergency" for "a local emergency" in (7)(A)(i); substituted "office" for "organization" in present (13); inserted "or prevention of" in present (20); and made related changes.

The 2009 amendment inserted "offices of emergency management" following "state" in (5) and (6), deleted (B) and added present (7)(C); substituted "management" for "services" twice in (11)(B); added present (12); substituted "of" for

"for" in present (13); inserted "offices of emergency management" in present (19)(B) and (20), and substituted "man-

agement" for "services" in present (19)(B); deleted former (20) and (22); and made minor stylistic changes.

12-75-105. [Repealed.]

Publisher's Notes. This section, concerning status of civil defense employees, was repealed by Acts 2007, No. 197, § 3.

The section was derived from Acts 1973, No. 511, § 23; A.S.A. 1947, § 11-1956; Acts 1999, No. 646, § 12.

12-75-106. Enforcement.

(a) Each state office of emergency management and local office of emergency management and the officers of each state office of emergency management and local office of emergency management shall execute and enforce such orders, rules, and regulations as may be made by the Governor under authority of this chapter.

(b) Each state office of emergency management and local office of emergency management shall make available for inspection at its office all orders, rules, and regulations made by the Governor or made under his or her authority.

History. Acts 1973, No. 511, § 27; A.S.A. 1947, § 11-1957; Acts 2009, No. 165, § 28.

Amendments. The 2009 amendment, in (a), substituted "state office of emergency management and local office of emergency management" for "organiza-

tion for emergency services" and for "thereof"; substituted "state office of emergency management and local office of emergency management" for "such organization" in (b); and made related and minor stylistic changes.

12-75-107. Declaration of disaster emergencies.

(a)(1) A disaster emergency shall be declared by executive order or proclamation of the Governor if he or she finds a disaster has occurred or that the occurrence or the threat of disaster is imminent.

(2) When time is critical because of rapidly occurring disaster emergency events, the Governor may verbally declare for immediate response and recovery purposes until the formalities of a written executive order or proclamation can be completed in the prescribed manner.

(b)(1) The state of disaster emergency shall continue until:

(A) The Governor finds that the threat or danger has passed and terminates the state of disaster emergency by executive order or proclamation; or

(B) The disaster has been dealt with to the extent that emergency conditions no longer exist and the employees engaged in the restoration of utility services have returned to the point of origin.

(2) No state of disaster emergency may continue for longer than sixty (60) days unless renewed by the Governor.

(c)(1) The General Assembly by concurrent resolution may terminate a state of disaster emergency at any time.

(2) Thereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency.

(d)(1) All executive orders or proclamations issued under this section shall indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency.

(2) In the case of a disaster, each provider of utility services whose services were interrupted shall prepare a report describing:

(A) The type of disaster emergency;

(B) The duration of the disaster emergency, which includes the time the utility personnel is dispensed to the work site and returns to the personnel's point of origin; and

(C) The personnel utilized in responding to the disaster emergency.

(e) An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, filed promptly with the Secretary of State.

(f) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to disaster emergencies.

History. Acts 1973, No. 511, § 8; A.S.A. 1947, § 11-1941; Acts 1999, No. 646, §§ 13, 14; 1999, No. 913, § 2; 2001, No. 1278, § 1; 2007, No. 197, § 4.

Amendments. The 2007 amendment deleted "except that, in the case of a disaster of the type described in § 12-75-103(2)(B), no executive order or proclamation of the Governor or the Director of the Arkansas Department of Emergency Management or his or her designee need

be declared to exist at the instance of the disaster's occurrence" at the end of (a)(1); substituted "disaster" for "disaster of the type described in § 12-75103(2)(B)" in (d)(2); and substituted "Secretary of State" for "Arkansas Department of Emergency Management, the Secretary of State, and the county or city clerk of the political subdivision to which it applies" in (e).

12-75-108. Local disaster emergencies — Declaration.

(a)(1) A local disaster emergency may be declared only by the chief executive or his or her designee of a political subdivision.

(2) If time is critical because of a rapidly occurring disaster emergency event, the chief executive verbally may declare a local disaster emergency for immediate response and recovery purposes until the formalities of a written declaration can be completed in the prescribed manner.

(3) A declaration of a local disaster emergency shall not be continued or renewed for a period in excess of one hundred twenty (120) days except by or with the consent of the governing body of the political subdivision.

(4) Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the city or county clerk, as applicable.

(b)(1) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance thereunder.

(2)(A) In addition to other powers conferred on the chief executive declaring a local disaster emergency, the chief executive may suspend the provisions of any local regulatory ordinances or regulations for up to thirty (30) days if strict compliance with the ordinance provisions would prevent, hinder, or delay necessary actions to cope with the disaster emergency.

(B) Local regulatory ordinances include, but are not limited to:

- (i) Zoning ordinances;
- (ii) Subdivision regulations;
- (iii) Regulations controlling the development of land;
- (iv) Building codes;
- (v) Fire prevention codes;
- (vi) Sanitation codes;
- (vii) Sewer ordinances;
- (viii) Historic district ordinances; and
- (ix) Any other regulatory type ordinances.

(c)(1) An interjurisdictional office of emergency management or official of an interjurisdictional office of emergency management shall not declare a local disaster emergency unless expressly authorized by the interjurisdictional agreement under which the interjurisdictional office of emergency management functions.

(2) However, an interjurisdictional office of emergency management shall provide aid and services in accordance with the interjurisdictional agreement under which it functions.

History. Acts 1973, No. 511, § 13; A.S.A. 1947, § 11-1946; Acts 2001, No. 568, § 1; No. 1278, § 2; 2007, No. 197, § 5; No. 465, § 2; 2009, No. 165, §§ 29, 30.

Amendments. The 2007 amendment by No. 197 inserted "or his or her designee" in (a)(1), inserted present (a)(2), and

redesignated the remaining subdivisions accordingly.

The 2007 amendment by No. 465 substituted "one hundred twenty (120) days" for "sixty (60) days" in present (a)(3).

The 2009 amendment substituted "A declaration of a local disaster emergency" for "It" in (a)(3); and rewrote (c).

12-75-109. Arkansas Department of Emergency Management — Establishment — Personnel.

(a) The Arkansas Department of Emergency Management is established as a public safety agency of the State of Arkansas.

(b) The Arkansas Department of Emergency Management shall have a director appointed by the Governor, with the advice and consent of the Senate, who shall serve at the pleasure of the Governor.

(c)(1) The Arkansas Department of Emergency Management shall have such professional, technical, secretarial, and clerical employees and may make such expenditures within its appropriations or from any federal or other funds made available to it from any source whatsoever for the purpose of emergency services, as may be necessary to carry out the purposes of this chapter.

(2) All such employees shall be in job positions as approved by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

(d)(1) There is created within the Arkansas Department of Emergency Management an emergency reserve cadre to be composed of trained and available specialists to assist regular employees during declared disaster response and recovery operations.

(2) The Director of the Arkansas Department of Emergency Management shall establish training and professional standards required to supplement state personnel based on state and federal disaster recovery program needs and shall establish a list of persons with those qualifications and make available to emergency reserve cadre personnel such additional training and education opportunities as may be needed to maintain currency and proficiency in the needed skills.

(3)(A) Emergency reserve cadre personnel shall be reimbursed at the current state classified entry level salary rate for the position they are temporarily employed to fill and meet such additional training, experience, and qualifications as established by the director for the grade level of the position for which they are employed.

(B) Emergency reserve cadre personnel shall:

(i) Be paid from disaster management funds or administrative funds, or both;

(ii) Be limited to salary, logistical, and travel expenses only; and

(iii) Not accrue ordinary leave, sick leave, or other employee benefits except for workers' compensation eligibility for injuries or death suffered in the line of duty.

(4)(A) Emergency reserve cadre personnel shall be called to active duty only upon declaration of a disaster emergency as stipulated in this chapter or the Disaster Relief Act of 1973, Pub. L. No. 93-288, or both, or by executive order of the Governor upon recommendation by the director for due cause or pending emergency needs and shall remain on active duty no longer than sixty (60) days after a declaration or declarations unless such declaration or declarations are extended by the Governor or the President of the United States, in which case they shall be continued for no more than sixty (60) days after the final declaration issued for that disaster emergency event.

(B) Based on the size, impact, and magnitude of the disaster event, the director shall determine the minimum number of emergency reserve cadre personnel required to effectively supplement regular state emergency management personnel and report these numbers to the Governor for approval.

(5) While in service described in subdivision (d)(4)(A) of this section, the emergency reserve cadre personnel have the same immunities as

regular state employees for good faith performance of their designated and assigned official duties under state sovereignty laws and practices.

History. Acts 1973, No. 511, § 5; 1977, No. 408, § 1; 1985, No. 687, § 4; 1985, No. 978, § 4; A.S.A. 1947, § 11-1938; Acts 1999, No. 646, § 15; 2001, No. 1278, § 3; 2007, No. 197, § 6; 2009, No. 165, § 31.

Amendments. The 2007 amendment substituted “Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration” for “Merit System Council” in (c)(2); deleted former (d) and redesignated the following subdivisions accordingly; and made stylistic changes.

The 2009 amendment, in (d), inserted “emergency” preceding “reserve cadre personnel” in (d)(2), substituted “Emergency reserve cadre” for “Qualified” in (d)(3)(A), for “Such” in (d)(3)(B), for “Such persons” in (d)(4)(A), and for “individuals so employed” in (d)(5), inserted “emergency” and “cadre” in (d)(4)(B), inserted “described in subdivision (d)(4)(A) of this section” in (d)(5), and made minor stylistic changes.

12-75-110. Arkansas Department of Emergency Management — State emergency operations plan.

(a) The Arkansas Department of Emergency Management shall coordinate and maintain a state emergency operations plan and keep it current, which plan may include:

- (1) Prevention and minimization of injury and damage caused by disaster;
- (2) Measures for prompt and effective response to disasters;
- (3) Emergency relief;
- (4) Identification of areas particularly vulnerable to disasters;
- (5) Recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (6) Assistance to local officials in designing local emergency action plans;
- (7) Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disasters;
- (8) Preparation and distribution to appropriate state and local officials of state catalogues of federal, state, and private assistance programs;
- (9) Organization of personnel and the establishment of chains of command;
- (10) Coordination of federal, state, and local disaster activities;
- (11) Coordination of the state emergency operations plan with the operations plans of the federal government, including without limitation, the National Response Framework;
- (12) Establishment of the criteria and definitions for determining catastrophic losses suffered by both individuals and public entities and the enhanced levels of assistance to be provided upon the declaration of a catastrophic loss disaster; and

(13) Other necessary matters.

(b)(1) In preparing and revising the state emergency operations plan, the department shall seek the advice and assistance of state agencies, local government, business, labor, industry, agriculture, civic, and volunteer organizations, and community leaders.

(2) In advising local and jurisdictional agencies, the department shall encourage them also to seek advice from the entities listed in subdivision (b)(1) of this section.

(c) The state emergency operations plan or any part of the state emergency operations plan may be incorporated in rules of the department or executive orders that have the force and effect of law.

History. Acts 1973, No. 511, § 5; 1977, No. 408, § 1; A.S.A. 1947, § 11-1938; Acts 1999, No. 449, § 6; 1999, No. 646, § 16; 2007, No. 197, § 7; 2009, No. 165, §§ 32, 33.

Amendments. The 2007 amendment substituted “emergency operations plan” for “disaster plan” in the section heading and throughout the section; substituted “operations plans of the federal government, including without limitation, the

National Response Plan” for “disaster plans of the federal government” in (a)(11); and made related changes.

The 2009 amendment substituted “personnel” for “manpower” in (a)(9); substituted “the entities listed in subdivision (b)(1) of this section” for “these sources” in (b)(2); substituted “rules” for “regulations” in (c); and made minor stylistic and punctuation changes.

12-75-111. Arkansas Department of Emergency Management — Other powers and duties.

(a) The Arkansas Department of Emergency Management shall, with the assistance and cooperation of other state and local government agencies:

(1) Determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of an emergency;

(2) Procure and pre-position supplies, medicines, materials, and equipment;

(3) Promulgate standards and requirements for local and interjurisdictional emergency operations plans;

(4) Periodically review local and interjurisdictional emergency operations plans;

(5) Provide for mobile support units;

(6) Establish and operate or assist political subdivisions, their local offices of emergency management, and interjurisdictional offices of emergency management to establish and operate training programs and programs of public information;

(7) Make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of this chapter;

(8) Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(9) Establish a register of persons with types of training and skills important in emergency prevention, preparedness, response, and recovery;

(10) Establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) Prepare for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate in coping with disasters;

(12) Cooperate with the federal government and any public or private agency or entity in achieving the purpose of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(13) Do other things necessary, incidental, or appropriate for the implementation of this chapter.

(b)(1) The department shall take an integral part in the development and revision of local and interjurisdictional emergency operations plans prepared under § 12-75-118.

(2)(A) To meet the requirements of subdivision (b)(1) of this section, the department shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their local offices of emergency management, interjurisdictional planning, and interjurisdictional offices of emergency management.

(B) Personnel described in subdivision (b)(2)(A) of this section shall consult with political subdivisions, local offices of emergency management, and interjurisdictional offices of emergency management on a regularly scheduled basis and shall make field examinations of the area, circumstances, and conditions to which particular local and interjurisdictional emergency operations plans are intended to apply and may suggest or require revisions.

History. Acts 1973, No. 511, § 5; 1977, No. 408, § 1; A.S.A. 1947, § 11-1938; Acts 1999, No. 646, § 17; 2007, No. 197, § 8; 2009, No. 165, §§ 34, 35.

Amendments. The 2007 amendment substituted “emergency operations plans” for “disaster plans” throughout the section.

The 2009 amendment substituted “local offices of emergency management” and “offices of emergency management” for two instances of “disaster agencies” in (a)(6); and rewrote (b)(2).

12-75-112. Communications networks.

(a) The Arkansas Department of Emergency Management shall operate and maintain information systems which will make available both voice and data links with federal agencies, other states, and state agencies as are assigned an emergency management role in the state emergency operations plan and local offices of emergency management.

(b) In addition to the minimum requirements of subsection (a) of this section, additional information systems networks may be established as

deemed necessary by the Director of the Arkansas Department of Emergency Management.

History. Acts 1973, No. 511, § 5; 1977, No. 408, § 1; 1985, No. 687, § 4; 1985, No. 978, § 4; A.S.A. 1947, § 11-1938; Acts 1999, No. 646, § 18; 2007, No. 197, § 9; 2009, No. 165, § 36.

Amendments. The 2007 amendment substituted “federal agencies” for “the

Federal Emergency Management Agency, other federal agencies” in (a), and made a related change.

The 2009 amendment inserted “of subsection (a) of this section” in (b), and made a minor stylistic change.

12-75-113. Emergency response vehicles.

(a) Due to the time-critical nature of response to the scene of a disaster or major emergency occurrence, the Director of the Arkansas Department of Emergency Management may designate appropriate vehicles as requested in the staffing patterns of the state offices of emergency management and local offices of emergency management and designate other state agency vehicles with an emergency management response requirement as emergency response vehicles.

(b) Designated state and local government emergency response vehicles under this chapter shall share the same privileges and immunities regarding traffic laws and ordinances as other emergency vehicles as defined by state law.

(c) Emergency vehicles authorized by this chapter shall be identified by a flashing light or rotating beacon which will be green in color.

(d) When responding to an emergency, the designated emergency vehicle shall have flashing lights or rotating beacon activated and must be equipped with and operating a siren device.

History. Acts 1973, No. 511, § 8; 1985, No. 687, § 6; 1985, No. 978, § 6; A.S.A. 1947, § 11-1941; Acts 1999, No. 646, § 19; 2009, No. 165, § 37.

substituted “emergency management” for “emergency services” or variant twice near the end of (a), and made minor stylistic changes.

Amendments. The 2009 amendment

12-75-114. Governor — Disaster emergency responsibilities.

(a) The Governor is responsible for meeting and mitigating, to the maximum extent possible, dangers to the people and property of the state presented or threatened by disasters.

(b)(1) Under this chapter, the Governor may issue executive orders, proclamations, and regulations and amend or rescind them.

(2) Executive orders, proclamations, and regulations have the force and effect of law.

(c)(1) There is created within the office of the Governor a disaster response fund, a disaster recovery fund, a catastrophic loss fund, and a hazard mitigation fund, which shall be separate and apart from the Governor’s standard emergency fund.

(2) The initial amount of the disaster response fund shall be in the amount of two million dollars (\$2,000,000), solely for use to defray the cost of immediate emergency response.

(3) The disaster recovery fund shall be in the amount of five million dollars (\$5,000,000), with:

(A) The sum of two million dollars (\$2,000,000) from the disaster recovery fund solely for use in individual assistance; and

(B) The sum of three million dollars (\$3,000,000) from the disaster recovery fund solely for use in public assistance.

(4) The hazard mitigation fund shall be in the amount of three million dollars (\$3,000,000), solely for use in hazard mitigation assistance.

(5) The sum of three million two hundred fifty thousand dollars (\$3,250,000) from the catastrophic loss fund solely for use in catastrophic losses suffered by both individuals and public entities.

(6) The Governor's disaster fund may be increased from time to time at the discretion of the Governor.

(7) Expenditures from the individual assistance and public assistance funds may only be made in the event of a disaster as defined in § 12-75-103 and only upon proclamation by the Governor.

(8) Expenditures from the emergency response fund shall be made by executive order of the Governor, upon recommendation and verification by the Director of the Arkansas Department of Emergency Management, and may only be made to defray immediate costs associated with response activities by emergency forces of state and local governments and private nonprofit forces duly registered in accordance with § 12-75-129.

(9)(A) Expenditures from the hazard mitigation fund shall be made by executive order of the Governor.

(B) The director shall establish and maintain a current hazard vulnerability analysis of key critical public facilities eligible for assistance under the Governor's hazard mitigation fund.

(10)(A) Expenditures from the catastrophic loss fund may only be made in the event of a federally declared disaster, as well as a disaster as defined in § 12-75-103, and only upon a separate proclamation by the Governor that a disaster has occurred in which catastrophic losses have been suffered by individuals or public entities in the state, or both.

(B) The director shall establish and maintain such criteria as are necessary to administer the funds authorized for catastrophic loss.

(d)(1) During the continuance of any state of disaster emergency, the Governor is Commander-in-Chief of all forces available for emergency duty.

(2) To the greatest extent practicable, the Governor shall delegate or assign operational control by prior arrangement embodied in appropriate executive orders or regulations, but nothing in this section restricts the Governor's authority to do so by orders issued at the time of the disaster emergency.

(e) In addition to any other powers conferred upon the Governor by law, the Governor may:

(1) Suspend the provisions of any regulatory statutes prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(3) Transfer the direction, personnel, or functions of state departments and agencies or units of state departments and agencies for the purpose of performing or facilitating emergency management;

(4) Subject to any applicable requirements for compensation under § 12-75-124, commandeer or utilize any private property if he or she finds this necessary to cope with the disaster emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the Governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; and

(9) Make provision for the availability and use of temporary emergency housing.

History. Acts 1973, No. 511, § 8; 1985, No. 629, § 2; A.S.A. 1947, § 11-1941; Acts 1993, No. 1049, § 3; 1995, No. 116, § 2; 1999, No. 449, § 7; 1999, No. 646, §§ 20, 21; 2001, No. 1278, § 4; 2007, No. 1290, § 86; 2009, No. 165, §§ 38, 39.

Amendments. The 2007 amendment

rewrote (c)(2), and added (c)(3) through (c)(5) and redesignated the remaining subdivisions accordingly.

The 2009 amendment substituted “§ 12-75-129” for “§ 12-75-127” in (c)(8); substituted “management” for “services” in (e)(3); and made a minor stylistic change.

12-75-115. Disaster prevention generally.

(a)(1) In addition to disaster prevention measures as included in the state, local, and interjurisdictional emergency operations plans, the Governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters.

(2) At the Governor’s direction, and pursuant to any other authority and competence state agencies have, including, but not limited to, those charged with responsibilities in flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning,

and construction standards shall make studies of disaster prevention-related matters.

(3) Studies under subdivision (a)(2) of this section shall be furnished to the Governor and the Arkansas Department of Emergency Management as soon as possible after completion and shall concentrate on means of reducing or avoiding damage caused by possible disasters or the consequences of possible disasters.

(4) The Governor, from time to time, shall make recommendations to the General Assembly, local government, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b)(1) If the department believes, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land use control in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the Governor.

(2) If the Governor, upon review of the recommendation, finds after public hearing that the changes are essential, he or she shall so recommend to the agencies or local governments with jurisdiction over the area and subject matter.

(3) If no action or insufficient action pursuant to the Governor's recommendations is taken within the time specified by the Governor, he or she shall so inform the General Assembly and request legislative action appropriate to mitigate the impact of disaster.

(c)(1) At the same time that the Governor makes his or her recommendations pursuant to subsection (b) of this section, the Governor may suspend the standard or control which he or she finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect.

(2) The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the General Assembly or amended by the Governor.

(3) During the time it is in effect, the standard or control contained in the Governor's regulation shall be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies.

(4) The Governor's action is subject to judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., but shall not be subject to temporary stay pending litigation.

History. Acts 1973, No. 511, § 14; 1977, No. 408, § 5; 1981, No. 891, § 3; A.S.A. 1947, § 11-1947; Acts 1999, No. 646, §§ 22, 23; 2007, No. 197, § 10; 2009, No. 165, § 40.

Amendments. The 2007 amendment

substituted "emergency operations plans" for "disaster plans" in (a)(1).

The 2009 amendment substituted "Studies under subdivision (a)(2) of this section shall" for "These studies will" in (a)(3), and made minor stylistic changes.

12-75-116. State and local governmental entities — Liaison officers.

(a)(1) It is the policy of this chapter that each department, commission, agency, or institution of state and local government actively and aggressively support the state offices of emergency management and local offices of emergency management to the end of providing the best possible preparation for response to or recovery from any emergency situation that may occur.

(2) In furtherance of the policy described in subdivision (a)(1) of this section, the head of each state department, commission, agency, or institution with an emergency management role or responsibility shall appoint a member or members of his or her staff as agency emergency management liaison officer or officers to act on his or her behalf in ensuring the agency's capability to fulfill its role in emergency management activities and shall ensure that the Arkansas Department of Emergency Management is notified of any change in the appointment.

(b) The agency emergency management liaison officer shall:

(1) Maintain close and continuous liaison with the department, as applicable;

(2) Prepare agency annexes to the state and, as applicable, local emergency operations plans which are compatible with this chapter and with guidance provided by the department;

(3) Report to the State Emergency Operations Center as required for any disaster training or exercises or emergency training or exercises;

(4) Maintain files of agency resources to include personnel, facilities, and equipment available for disaster operation;

(5) Ensure that the agency can respond promptly and cooperatively with other agencies in any disaster or major emergency situation under the overall management of the department;

(6) Advise, assist, and evaluate the capabilities of counterpart local or federal government agencies in preparing for and carrying out disaster operations;

(7) Designate personnel available for assignment to mobile support units and train such personnel in the tasks to be performed; and

(8) Perform other related functions necessary to carry out the purpose of this chapter.

(c) As conditions or situations may require or dictate, the Director of the Arkansas Department of Emergency Management may request a state department, agency, or institution not currently participating in the emergency management liaison officer program to appoint an officer in accordance with this section.

(d) Nothing in subsections (a)-(c) of this section shall be interpreted as relieving or otherwise abridging the responsibility and authority of agency directors in carrying out disaster operations for which their agencies are solely responsible.

History. Acts 1973, No. 511, § 7; 1985, No. 687, § 5; 1985, No. 978, § 5; A.S.A. 1947, § 11-1940; Acts 1993, No. 1049, § 4; 1999, No. 646, § 24; 2007, No. 197, § 11; 2009, No. 165, §§ 41, 42.

Amendments. The 2007 amendment substituted “emergency management” for “emergency services” throughout the section; in (a), inserted “or recovery” in (a)(1), and added “and will ensure Arkansas Department of Emergency Management is notified of any change in the appointment” in (a)(2); inserted present (b)(3) and redes-

ignated the following subdivisions accordingly; and made related changes.

The 2009 amendment, in (a), inserted “offices of emergency management” in (a)(1), and in (a)(2), inserted “described in subdivision (a)(1) of this section” and substituted “emergency management activities” for “emergency services activities”; in (b), rewrote the introductory language, which read: “It will be the responsibilities of this officer to”; and made minor stylistic changes.

12-75-117. Interjurisdictional disaster planning and service areas.

(a)(1)(A) By executive order, the Governor may combine two (2) or more established local offices of emergency management as an interjurisdictional office of emergency management.

(B)(i) Before a combination under subdivision (a)(1)(A) of this section, the jurisdictions involved shall prepare for the Governor’s approval a written mutual interjurisdictional agreement that specifies how and by whom the emergency management coordinator shall be appointed.

(ii) The interjurisdictional agreement shall also include specific provisions addressing the funding, administration, staff, and operational control of the interjurisdictional office of emergency management.

(C) The interjurisdictional office of emergency management shall meet the same minimum standards and requirements as a single-jurisdiction local office of emergency management in order to maintain eligibility for state and federal emergency management funding and program assistance.

(2) A finding of the Governor pursuant to this subsection shall be based on an assessment conducted by the Director of the Arkansas Department of Emergency Management using one (1) or more factors related to the difficulty of maintaining an efficient, effective, and economical system for disaster and emergency preparedness, mitigation, response, and recovery such as:

(A) Small or sparse population;

(B) Limitations on public financial resources severe enough to make maintenance of a separate established local office of emergency management unreasonably burdensome;

(C) Unusual vulnerability to disasters and emergencies based on geographical, geological, hydrological, meteorological, or technological disaster potential; and

(D) Other relevant conditions or circumstances.

(b)(1) If the Governor finds that a vulnerable area lies only partly within this state and includes territory in another state or states and that it would be desirable to establish an interstate relationship,

mutual aid, or an area organization for disaster, he or she shall take steps toward that end as may be desirable.

(2) If this action is taken with jurisdictions having enacted the Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq., any resulting agreement or agreements may be considered supplemental agreements pursuant to Article VI of that compact.

(3)(A) If the other jurisdiction or jurisdictions with which the Governor proposes to cooperate pursuant to subdivisions (b)(1) and (2) of this section have not enacted that compact, then he or she may negotiate a special agreement with the jurisdiction or jurisdictions.

(B) Any agreement, if sufficient authority for the making thereof does not otherwise exist, becomes effective only after its text has been communicated to the General Assembly and neither house of the General Assembly has disapproved it by adjournment of the next ensuing session competent to consider it or within thirty (30) days of its submission, whichever is longer.

History. Acts 1973, No. 511, § 11; A.S.A. 1947, § 11-1944; Acts 1993, No. 1049, § 5; 1999, No. 646, § 25; 2007, No. 197, § 12; 2009, No. 165, § 43.

Amendments. The 2007 amendment substituted “emergency management” for “emergency services” throughout the section.

The 2009 amendment, in (a)(1), inserted “under subdivision (a)(1)(A) of this section” in (a)(1)(B)(i), inserted “interjurisdictional” in (a)(1)(B)(i) and (a)(1)(B)(ii), inserted “local” and substituted “management” for “services” in (a)(1)(C), and made minor stylistic changes.

12-75-118. Local and interjurisdictional offices of emergency management and services.

(a)(1) Each political subdivision within this state shall be within the jurisdiction of and served by the Arkansas Department of Emergency Management and by a local office of emergency management or interjurisdictional office of emergency management.

(2) A local office of emergency management or interjurisdictional office of emergency management shall be established as a public safety agency of its respective political subdivision or political subdivisions and shall be under the direction and control of the appropriate chief executive for the purposes of mitigation of, planning for, response to, and recovery from disaster and major emergency occurrences and for operation of public safety information networks.

(b)(1) Each county within the state and those municipalities specifically designated by the Governor shall establish, fund, and maintain an established local office of emergency management or, as necessary, make arrangements through an interjurisdictional agreement to receive emergency management.

(2) Unless a municipality has been specifically designated as a local office of emergency management, it shall receive emergency management support from the county or counties where its corporate limits are situated.

(c)(1) The Governor shall determine if additional municipal local offices of emergency management or interjurisdictional offices of emergency management are required based on an assessment conducted by the Director of the Arkansas Department of Emergency Management using one (1) or more of the factors enumerated in § 12-75-117(a).

(2) The department shall publish and keep current a list of municipalities required to have local offices of emergency management or interjurisdictional offices of emergency management under this subsection.

(d) The Governor may require a political subdivision to establish and maintain a local office of emergency management or an interjurisdictional office of emergency management jointly with one (1) or more contiguous political subdivisions if he or she finds that the establishment and maintenance of any agency or participation in an agency is made necessary by circumstances or conditions that make it unusually difficult to provide disaster or major emergency prevention, preparedness, response, or recovery services under other provisions of this chapter.

(e) Each political subdivision that does not have a local office of emergency management and has not made arrangements to secure or participate in the emergency management of an agency shall have a liaison officer designated to facilitate the cooperation and protection of that political subdivision in the work of disaster and major emergency prevention, preparedness, response, and recovery.

(f)(1) The chief executive of each political subdivision shall exercise comparable authority within his or her political subdivision, and within the limits of the Arkansas Constitution and laws of the state, as the Governor exercises over the state government during disasters and major emergencies. The chief executive shall ensure to the maximum extent possible, that his or her jurisdiction meets the minimum expected capability for disaster and emergency mitigation, planning, response, and recovery.

(2) The chief executive of a political subdivision shall notify the department of the manner in which the political subdivision is providing or securing disaster planning and emergency management, provide a staffing pattern for the local office of emergency management, identify the person who heads the local office of emergency management, and furnish additional information relating thereto as the department requires.

(g)(1) Each local office of emergency management and interjurisdictional office of emergency management shall prepare and keep current an emergency operations plan for its area.

(2)(A) The emergency operations plan and all annexes must be approved by the local office of emergency management of the political subdivision and receive concurrence of the chief executive of the political subdivision.

(B) The emergency operations plan shall then be submitted to the department for approval prior to implementation.

(h) The local office of emergency management or interjurisdictional office of emergency management, as the case may be, shall prepare a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster and major emergency chain of command. This statement shall be distributed to all appropriate officials in written form.

(i)(1)(A) The county judge of each county and the chief executive of those municipal jurisdictions specifically designated as established local offices of emergency management shall appoint an emergency management coordinator for their respective local offices of emergency management.

(B) The written mutual interjurisdictional agreement between the participating jurisdictions in an interjurisdictional office of emergency management, executed under § 12-75-117(a), shall govern the appointment of the emergency management coordinator of the interjurisdictional office of emergency management.

(C) The emergency management coordinator shall act for and on behalf of the appropriate chief executive to manage and coordinate the functions, duties, and activities of the established local office of emergency management.

(2) The emergency management coordinator and such supporting staff of an established local office of emergency management as may be employed in part, or in whole, by state and federal emergency management program funds, shall be responsible for meeting all standards and requirements stipulated for funding under the programs.

(3)(A) The director shall establish and periodically review criteria necessary to ensure compliance with minimum standards and requirements.

(B) Failure to meet or maintain minimum standards and requirements or noncompliance with any part of this chapter by an established local office of emergency management may result in a decision by the director to reduce, withhold, or terminate partial or full funding for any or all local offices of emergency management programs in which the political subdivision participates or for which it may be otherwise eligible.

(j)(1) Local offices of emergency management shall operate and maintain as a minimum an information systems link with the department.

(2)(A) When authorized by the chief executive of the political subdivision and properly staffed, the local office of emergency management may operate a public safety communications center for the purposes of coordination, dispatch, and information services for local government public safety agencies and private or volunteer agencies with an emergency management mission.

(B) The public safety communications center must be staffed by paid local office of emergency management public safety officers of the political subdivision and operate on a continuous basis if it is to serve as a law enforcement or fire dispatch and service center.

History. Acts 1973, No. 511, § 10; 1977, No. 408, § 4; 1985, No. 687, § 7; 1985, No. 978, § 7; A.S.A. 1947, § 11-1943; Acts 1993, No. 1049, § 6; 1999, No. 646, §§ 26-31; 2007, No. 197, § 13; 2009, No. 165, § 44.

Amendments. The 2007 amendment

substituted “emergency management” for “emergency services” throughout the section; and substituted “local office” for “local organization” in (b)(2).

The 2009 amendment rewrote the section to clarify references to offices of emergency management.

12-75-119. Statewide mutual aid system.

(a)(1) All emergency jurisdictions shall participate in the statewide mutual aid system, except as provided in subdivision (a)(2) of this section.

(2)(A) An emergency jurisdiction may elect not to participate in the statewide mutual aid system.

(B) In order to make the election, the governing body of the emergency jurisdiction shall enact a resolution declaring that the emergency jurisdiction elects not to participate in the statewide mutual aid system.

(C) The chief executive officer of the governing body shall provide a copy of the resolution to the Arkansas Department of Emergency Management within ten (10) days of the enactment of the resolution.

(b) Within its own emergency jurisdiction, a participating emergency jurisdiction shall:

(1) Identify potential problems and hazards that could affect the emergency jurisdiction using an identification system common to all participating emergency jurisdictions;

(2) Conduct joint planning, intelligence sharing, and threat assessment development with contiguous participating emergency jurisdictions;

(3) Conduct joint training exercises with contiguous participating emergency jurisdictions at least one (1) time every other year;

(4) Identify and inventory, at least annually, current services, equipment, supplies, personnel, and other resources related to planning, prevention, mitigation, and response and recovery activities of the participating emergency jurisdiction; and

(5) Adopt and implement an incident management system consistent with Homeland Security Presidential Directive-5, as it existed on January 1, 2005.

(c)(1) The chief executive officer of the governing body of a participating emergency jurisdiction, or his or her designee may request assistance from another participating emergency jurisdiction:

(A) To prevent, mitigate, or respond and recover from a local emergency declared under § 12-75-108; or

(B) To conduct joint training exercises.

(2)(A) A request for assistance may be made verbally or in writing.

(B) Verbal requests shall be followed with written confirmation as soon as practical.

(3)(A) A request for assistance is not required to be reported to the department in advance of or concurrent with the request.

(B) However, a request for assistance shall be reported to the department in writing as soon as practical.

(d) A participating emergency jurisdiction's obligation to provide assistance to another participating emergency jurisdiction with the prevention, mitigation, and response and recovery activities related to a declared emergency or training exercises is subject to the following conditions:

(1) There must be a local emergency declared under § 12-75-108 or a plan to conduct training exercises;

(2) A responding participating emergency jurisdiction may withhold its resources to the extent necessary to provide reasonable protection and services for its own emergency jurisdiction;

(3)(A) An emergency responder from a participating emergency jurisdiction responding to a request for assistance from another participating emergency jurisdiction shall remain under the command control of his or her home jurisdiction, including use of medical protocols, standard operating procedures, and other protocols and procedures identified by the department.

(B) However, for the duration of the assistance, the emergency responder shall be under the operational control of the participating emergency jurisdiction requesting assistance in accordance with the incident management system of that participating emergency jurisdiction; and

(4)(A)(i) Equipment and supplies belonging to a participating emergency jurisdiction responding to a request for assistance from another participating emergency jurisdiction shall remain under the command control of the responding participating emergency jurisdiction.

(ii) However, for the duration of the assistance, the equipment and supplies shall be under the operational control of the participating emergency jurisdiction requesting assistance in accordance with the incident management system of that participating emergency jurisdiction.

(B) A participating emergency jurisdiction providing assistance may donate equipment, supplies, or any other kind of asset to another participating emergency jurisdiction.

(e) If an emergency responder holds a license, certificate, or other permit issued by a participating emergency jurisdiction or the state evidencing qualification in a professional, mechanical, or other skill and the assistance of the emergency responder is requested by a participating emergency jurisdiction, the emergency responder shall be deemed to be licensed, certified, or permitted in the participating emergency jurisdiction requesting assistance for the duration of the declared emergency or training exercises, subject to any limitations and conditions imposed by the chief executive officer of the governing body of the participating emergency jurisdiction receiving the assistance.

(f)(1)(A) A participating emergency jurisdiction receiving assistance under the statewide mutual aid system shall reimburse a participating emergency jurisdiction responding to a request for assistance for

all expenses associated with providing the assistance other than regular salaries and benefits.

(B) A request for reimbursement shall be made in accordance with procedures developed by the Arkansas Homeland Security Advisory Group and adopted by the department as a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(C) The department shall not provide reimbursement for expenses associated with training exercises except in accordance with applicable rules.

(2)(A)(i) If a participating emergency jurisdiction disagrees with another participating emergency jurisdiction regarding reimbursement, the participating emergency jurisdiction asserting the dispute shall notify in writing the chief executive officer of the governing body of the participating emergency jurisdiction with which the dispute exists.

(ii) The notification shall be sent by certified mail, return receipt requested.

(B)(i) The participating emergency jurisdictions involved in the dispute shall make every effort to resolve the dispute within thirty (30) days of receipt of the written notice by the noncomplaining participating emergency jurisdiction.

(ii) In the event that the dispute is not resolved within ninety (90) days of receipt of written notice of the dispute, either participating emergency jurisdiction may request binding arbitration.

(iii) Arbitration conducted under this subdivision (f)(2)(B) shall be conducted under the commercial arbitration rules of the American Arbitration Association, as in effect on January 1, 2005.

(g)(1) An emergency responder who assists a participating emergency jurisdiction that is not the emergency responder's home emergency jurisdiction and who sustains injury or death in the course of, and arising out of, the emergency responder's employment is entitled to all applicable benefits normally available from the emergency responder's home emergency jurisdiction.

(2) An emergency responder may receive additional state benefits as provided by law for death in the line of duty.

(h)(1) All activities performed under this section are deemed to be governmental functions.

(2)(A) For the purposes of liability, an emergency responder acting under the operational control of a participating emergency jurisdiction requesting assistance is deemed to be an employee of the participating emergency jurisdiction requesting assistance and exercising operational control.

(B) Except in cases of willful misconduct, gross negligence, or bad faith, neither the participating emergency jurisdiction providing assistance nor its employees shall be liable for the death of or injury to persons or for damage to property when complying or attempting to comply with the request of a participating emergency jurisdiction for assistance under the statewide mutual aid system.

(i) This section shall not be construed to prohibit a participating emergency jurisdiction from entering into interjurisdictional agreements with one (1) or more other emergency jurisdictions or emergency services entities and shall not affect any other agreement to which an emergency jurisdiction may be a party.

History. Acts 1973, No. 511, § 12; 1049, § 7; 1999, No. 646, § 32; 2001, No. 1985, No. 687, § 8; 1985, No. 978, § 8; 1278, § 5; 2005, No. 1179, § 2. A.S.A. 1947, § 11-1945; Acts 1993, No.

12-75-120. [Repealed.]

Publisher's Notes. This section, concerning mobile support units, was repealed by Acts 2007, No. 197, § 14. The section was derived from Acts 1973, No. 511, § 9; 1977, No. 408, § 3; 1981, No. 891, § 2; A.S.A. 1947, § 11-1942.

12-75-121. Utilization of existing services and facilities.

(a) In carrying out the provisions of this chapter, the Governor and the chief executives or designees of the political subdivisions of the state are directed to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state and of the political subdivisions thereof to the maximum extent practicable.

(b) The officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the Governor and to the emergency management organization of the state upon request.

History. Acts 1973, No. 511, § 19; A.S.A. 1947, § 11-1952; Acts 2007, No. 197, § 15. substituted "designees" for "governing bodies" in (a), and substituted "emergency management" for "emergency services" in (b).

Amendments. The 2007 amendment

12-75-122. Political activity prohibited.

An emergency management organization established under the authority of this chapter shall not:

- (1) Participate in any form of political activity; or
- (2) Be employed directly or indirectly for political purposes.

History. Acts 1973, No. 511, § 20; A.S.A. 1947, § 11-1953; Acts 2009, No. 165, § 45. "emergency management organization" for "organization for emergency services" in the introductory language, and made related and stylistic changes.

Amendments. The 2009 amendment redesignated the section, substituted

12-75-123. Appropriations and authority to accept services, gifts, grants, and loans.

(a) Each political subdivision may make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local office of emergency management.

(b)(1) If the federal government or any agency or officer of the federal government offers to the state, or through the state to any political subdivision, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management or disaster relief, the state, acting through the Governor, or the political subdivision, acting with the consent of the Governor and through its chief executive or governing body, may accept the offer.

(2) Upon such acceptance, the Governor of the state or chief executive or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c)(1) Whenever any person, firm, or corporation shall offer to the state, or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency management, the state, acting through the Governor, or such political subdivision, acting through its chief executive or governing body, may accept such offer.

(2) Upon such acceptance, the Governor of the state, or chief executive or governing body of such political subdivision may authorize any officer of the state, or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state, or such political subdivision and subject to the terms of the offer.

History. Acts 1973, No. 511, § 18; A.S.A. 1947, § 11-1951; Acts 2007, No. 197, § 16; 2009, No. 165, §§ 46, 47.

Amendments. The 2007 amendment substituted "emergency management" for "emergency services" in (a) and (c)(1).

The 2009 amendment substituted "office of" for "organization for" in (a); substituted "emergency management" for "emergency services" in (b)(1); and made minor stylistic changes.

12-75-124. Compensation for services and property.

(a)(1) Each person within this state shall conduct himself or herself and keep and manage his or her affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to successfully meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency.

(2) This chapter neither increases nor decreases these obligations but recognizes their existence under the Arkansas Constitution and statutes of this state and the common law.

(3) Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this chapter are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his or her services or property without compensation.

(b) The state, any agency of the state, and any political subdivision shall not compensate any personal services except pursuant to statute or local law or ordinance.

(c) Compensation for property shall be only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the Governor or a member of the disaster emergency forces of this state.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter shall file a claim therefor with the Arkansas State Claims Commission in the form and manner the commission provides.

(e) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the commission, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

(f) Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to provide a fire break or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.

History. Acts 1973, No. 511, § 15; A.S.A. 1947, § 11-1948; Acts 2009, No. 165, § 48.

Amendments. The 2009 amendment substituted "The state, any agency of the

state, and any political subdivision shall not compensate any personal services" for "No personal services may be compensated by the state or any subdivision or agency thereof" in (b).

12-75-126. Public safety officers.

(a) No person shall be employed or associated in any capacity in any emergency management organization established under this chapter who:

(1) Advocates or has advocated a change by force or violence in the constitutional form of the United States Government or of this state or the overthrow of any government in the United States by force or violence; or

(2) Has pleaded guilty or nolo contendere to or been found guilty of any subversive act against the United States or is under indictment or information charging any subversive act against the United States.

(b) The Director of the Arkansas Department of Emergency Management and persons he or she may designate from the state and local offices of emergency management staffing patterns shall be sworn public safety officers as defined and limited by this chapter.

(c)(1) Before entering upon his or her duties, each person who is selected to serve as a public safety officer in an organization of emergency management shall take an oath in writing before a person authorized to administer oaths in this state.

(2) The oath required in subdivision (c)(1) of this section shall be substantially as follows:

"I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of Public Safety Officer, upon which I am now about to enter."

(d)(1)(A) The director may determine what constitutes an Arkansas Department of Emergency Management uniform for department personnel.

(B) The chief executive of a local office of emergency management may determine what constitutes a uniform for his or her jurisdiction.

(2) The uniform may include a badge or identification card, or both, of appropriate design and dimensions to identify local office of emergency management personnel as bona fide emergency management workers within their jurisdiction and department personnel as bona fide emergency workers for the state.

(e) Any person issued or provided a badge, identification, or uniform described in subsection (d) of this section shall wear, carry, or display it at such times and places as shall be designated or required by the chief executive of the local jurisdiction for local office of emergency management personnel and by the director for department personnel.

History. Acts 1973, No. 511, § 21; 1985, No. 687, § 9; 1985, No. 978, § 9; A.S.A. 1947, § 11-1954; Acts 1999, No. 646, § 33; 2007, No. 197, § 17.

Amendments. The 2007 amendment

added present (a) and redesignated former (a) as present (b), deleted former (b), and added present (c) through (e); and substituted "emergency management" for "emergency services" in present (b).

12-75-127. [Repealed.]

Publisher's Notes. This section, concerning emergency servicers workers' eligibility, oath, and uniform, was repealed by Acts 2007, No. 197, § 18. The section

was derived from Acts 1973, No. 511, § 21; A.S.A. 1947, § 11-1954; Acts 1989, No. 853, § 1; 1999, No. 646, § 34.

12-75-128. Emergency responders — Immunities and exemptions.

(a) All functions under this chapter and all other activities relating to emergency management are declared to be governmental functions.

(b) No emergency responder, except in cases of willful misconduct, gross negligence, or bad faith, when complying with or reasonably attempting to comply with this chapter, or any other rule or regulation promulgated pursuant to the provisions of this section or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

(c) The immunity in subsection (b) of this section shall extend to both emergency responders who are employees and to qualified emergency responders who are volunteers.

(d) The provisions of this section shall not affect the right of any person to receive benefits to which he or she would otherwise be entitled

to under this chapter, under the Workers' Compensation Law, § 11-9-101 et seq., or under the retirement system laws of Arkansas nor the right of any such person to receive any benefits or compensation under any act of Congress.

(e)(1) Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized emergency management worker who in the course of performing his or her duties as an emergency management worker practices the professional, mechanical, or other skill during an emergency.

(2)(A) Subdivision (e)(1) of this section does not apply to a license issued to a health practitioner, as defined in § 12-87-102.

(B) However, a health practitioner license issued by another state is recognized in this state to the extent provided under this chapter, the Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq., the Uniform Emergency Volunteer Health Practitioners Act, § 12-87-101 et seq., and other laws of this state.

(f) [Repealed.]

(g) Any emergency responder performing emergency preparedness services at any place in this state pursuant to agreements, compacts, or arrangements for mutual aid and assistance, to which the state or a political subdivision of the state is a party, shall possess the same powers, duties, immunities, and privileges he or she would ordinarily possess if performing his or her duties in the state, province, or political subdivision of the state or province in which normally employed or rendering services.

(h)(1) An emergency responder is not required by this chapter to possess a license, certificate, permit, or other official recognition for his or her expertise in a particular field or area of knowledge.

(2) However, to the extent that an emergency responder engages in a professional activity that by law requires a license, certificate, permit, or other official recognition in order to engage in the professional activity, the emergency responder shall possess the appropriate professional license, certificate, permit, or other official recognition.

History. Acts 1973, No. 511, § 16; 1981, No. 891, § 4; A.S.A. 1947, § 11-1949; Acts 2005, No. 1962, § 53; 2007, No. 197, § 19; 2009, No. 165, §§ 49-52; 2009, No. 432, § 2.

Amendments. The 2007 amendment substituted "emergency responders" for "emergency services workers" in the section heading and throughout the section.

The 2009 amendment by No. 165 substituted "emergency management" for

"emergency services" or variant in (a) and (e); substituted "an emergency management worker practices the" for "such, practice such" in (e); deleted (f); added (h); and made minor stylistic and punctuation changes.

The 2009 amendment by No. 432 re-wrote (e)(2).

12-75-129. Emergency responders — Workers' compensation benefits.

(a)(1) A person appointed and regularly enrolled in an accredited emergency management organization and covered by this chapter is limited to the Workers' Compensation Law, § 11-9-101 et seq., for benefits payable for an injury to or death of the person, if:

(A) The person is regularly employed by a local government or the state; and

(B) The injury or death occurs while the person is:

(i) Actually engaged in emergency management duties either during training or during a period of emergency; and

(ii) Subject to the order or control of or pursuant to a request of and under the supervision and instruction of the:

(a) Governor;

(b) Arkansas Department of Emergency Management; or

(c) Chief executive or the designated director of a department, county, or an accredited local government unit making use of emergency management volunteer workers.

(2) If a person described in subdivision (a)(1) of this section is a qualified emergency responder of the state or a local office of emergency management, then recovery is limited as provided in this section.

(b) The remedy provided in this section shall be the exclusive remedy as against the state and political subdivisions thereof.

(c)(1) For the purpose of workers' compensation coverage in cases of injury to or death of an individual, all duly qualified emergency responders shall be deemed local government or state employees and shall receive compensation, and their survivors shall receive death benefits in like manner as regular local government or state employees for injury or death arising out of and in the course of their activities as emergency responders.

(2) If an emergency responder is injured or killed while subject to the order or control of a local government, compensation and benefits shall be charged against the applicable local government's experience rate and paid from the appropriate state workers' compensation fund.

(3) If the emergency responder was under the order or control of a state agency when injured or killed, compensation and benefits shall be charged against the experience rate of the state agency who exercised order or control at the time of injury or death and paid from the appropriate state workers' compensation fund.

(d)(1) For the purpose of subsection (c) of this section, the weekly compensation benefits for such emergency responders who receive no monetary compensation for services rendered as such workers shall be calculated based upon the wages received from their regular or usual employments, the same as a regular local or state employee, with respect to injury, disability, or death.

(2) The reimbursement per day for approved out-of-pocket expenses incurred in response to an emergency situation, such as gasoline, oil,

uniforms, required equipment, and other items is not considered monetary compensation for the volunteer emergency responder.

(e)(1) In the event that any person who is entitled to receive benefits through the application of subsection (c) of this section receives, in connection with the injury, disability, or death giving rise to such entitlement, benefits under an act of Congress or federal program providing benefits for emergency responders or their survivors, then the benefits payable under this section shall be reduced to the extent of the benefits received under such other act or program.

(2) Any person who performs the duties of a member or trainee as an adjunct to his or her regular employment and who otherwise would be entitled to receive workers' compensation benefits for his or her injury, disability, or death, if injured in the performance of such duties, shall be deemed to have been injured, disabled, or killed in the course of his or her regular employment.

(f) An emergency responder shall be deemed duly registered and qualified when he or she is a member of and has on file in either a local office of emergency management or in the Arkansas Department of Emergency Management the following information:

- (1) Name and address;
- (2) Date enrolled; and
- (3) Class of service assigned.

(g) Payments and death and disability benefits as provided in this section shall be made from the Workers' Compensation Revolving Fund for state employees.

History. Acts 1973, No. 511, § 22; 1977, No. 408, § 6; 1981, No. 891, § 5; A.S.A. 1947, § 11-1955; Acts 1999, No. 646, §§ 35, 36; 2007, No. 197, § 20; 2009, No. 165, §§ 53-55.

Amendments. The 2007 amendment substituted "emergency responders" for "emergency services workers" in the section heading; substituted "emergency responders" for "emergency services volunteer workers" and "responder" for "worker" throughout the section; substituted "emergency management" for "emergency services" or "service" throughout (a)(1) and (a)(2); substituted "a local office" for "an accredited local organization" in (a)(2) and (f); substituted "duly

qualified" for "duly registered and qualified" in (c)(1); substituted "reimbursement per day for approved out-of-pocket expenses" for "reimbursement of twenty-five dollars (\$25.00) or less for out-of-pocket expenses" in (d)(2); inserted "or her" following "adjunct to his" in (e)(2); deleted former (f)(3) and redesignated the following subdivision accordingly; and made related changes.

The 2009 amendment rewrote (a); substituted "emergency responder" for "worker" in (d)(2); substituted "office of emergency management" for "emergency management office" in (f); and made minor stylistic changes.

12-75-132. Arkansas Homeland Security Advisory Group — Created.

(a) There is created an advisory body to the Arkansas Department of Emergency Management, to be known as the "Arkansas Homeland Security Advisory Group".

(b) The advisory group shall consist of representatives of federal, state, and local agencies and professional associations as determined by

the Director of the Arkansas Department of Emergency Management. The advisory group shall include, at a minimum, representatives of the following:

- (1) Arkansas Department of Emergency Management;
 - (2) Arkansas Ambulance Association;
 - (3) Arkansas Association of Chiefs of Police;
 - (4) Arkansas Association of Fire Chiefs;
 - (5) Arkansas Citizen Corps Point of Contact;
 - (6) Arkansas Department of Environmental Quality;
 - (7) Department of Health;
 - (8) Arkansas Emergency Management Association;
 - (9) Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department;
 - (10) Arkansas Livestock and Poultry Commission;
 - (11) Arkansas Municipal League;
 - (12) National Guard;
 - (13) 61st Civil Support Team of the National Guard;
 - (14) Arkansas Sheriffs' Association;
 - (15) Department of Arkansas State Police;
 - (16) State Plant Board;
 - (17) County Judges Association of Arkansas;
 - (18) Centers for Disease Control and Prevention;
 - (19) Department of Information Systems;
 - (20) Federal Bureau of Investigation;
 - (21) Health Resources and Services Administration of the United States Department of Health and Human Services;
 - (22) United States Secret Service;
 - (23) United States Attorney for the Eastern District of Arkansas; and
 - (24) United States Attorney for the Western District of Arkansas.
- (c) A representative of the Arkansas Department of Emergency Management shall serve as chair of the advisory group.

(d) The advisory group shall develop and maintain comprehensive guidelines and procedures that address requirements for the following:

- (1) Requesting and providing assistance through the statewide mutual aid system;
 - (2) Recordkeeping for all participating emergency jurisdictions;
 - (3) Reimbursement for assistance provided through the statewide mutual aid system; and
 - (4) Any other process necessary to implement the statewide mutual aid system.
- (e) The advisory group shall meet as often as required to:
- (1) Review the progress and status of statewide emergency programs;
 - (2) Assist in developing methods to track and evaluate activation of the statewide mutual aid system; and
 - (3) Examine issues facing emergency jurisdictions regarding the implementation and management of the statewide mutual aid system.

(f)(1) The advisory group shall prepare at least annually a report on the condition and effectiveness of the statewide mutual aid system and other emergency programs in the state.

(2) The report shall include recommendations with regard to correcting any deficiencies identified by the advisory group in the statewide mutual aid system.

(3) The advisory group shall submit the report annually to the Director of the Arkansas Department of Emergency Management and to the House Committee on State Agencies and Governmental Affairs and the Senate Committee on State Agencies and Governmental Affairs.

History. Acts 2005, No. 1179, § 3; 2007, No. 751, § 6; 2009, No. 165, § 56.

Amendments. The 2007 amendment deleted former (b)(22) and redesignated the remaining subsections accordingly.

The 2009 amendment, in the introductory language of (d), deleted "By January 1, 2006" at the beginning, inserted "and maintain," and made related changes.

12-75-133. Position transfer.

Upon approval of the Chief Fiscal Officer of the State, the Arkansas Department of Emergency Management may transfer positions between appropriations as may be required:

(1) If a disaster occurs that results in a presidential disaster proclamation; or

(2) When an employee occupies one (1) position that is to be paid from two (2) or more appropriations during a single fiscal year.

History. Acts 2009, No. 165, § 57.

SUBCHAPTER 2 — EMPLOYEES

SECTION.

12-75-201. [Repealed.]

12-75-201. [Repealed.]

Publisher's Notes. This section was repealed by Acts 2009, No. 165, § 58. The section was derived from Acts 1997, No. 1069, § 19; 1999, No. 1427, § 16.

For current law, see § 12-75-133.

CHAPTER 77

ARKANSAS EARTHQUAKE PREPAREDNESS ACT OF 1989

SECTION.

12-77-103. Arkansas earthquake program.

12-77-105. Purpose.

SECTION.

12-77-106. Duties.

12-77-107. Reports.

12-77-103. Arkansas earthquake program.

(a)(1) The Arkansas Department of Emergency Management, Earthquake Preparedness Program, shall coordinate an earthquake program designed to protect the lives and property of persons of this state, to the fullest possible extent, from the direct effects of seismic activity affecting Arkansas as well as from secondary effects created by such occurrence.

(2) The program shall coordinate all activities involved in mitigation and preparedness regarding seismic events. Toward that end, the earthquake program shall include but not be limited to:

(A) Continued assessment from proper scientific authorities of the seismic risk to the state;

(B) Training and education of state and local government officials, employees, and citizens of Arkansas regarding preparation and protective measures that can be taken before, during, and after an earthquake;

(C) Planning coordination, guidance, and assistance to all state and local government officials in preparation for, response to, and recovery from earthquakes;

(D) Coordination of earthquake program activities with comparable agencies of the federal government and other states; and

(E) Dissemination of information to the public pertaining to earthquake hazards, especially to Arkansans living near the New Madrid Fault, protective measures, seismic resistance in building construction, and appropriate actions to be taken before, during, and after an earthquake, and other matters the Arkansas Department of Emergency Management shall determine to be necessary or appropriate to educate, inform, and equip citizens in this state to deal with any earthquake.

(b) In order to carry out the responsibilities provided for in this section, the program is authorized to employ such personnel as deemed necessary to the extent that funds are appropriated therefor by the General Assembly.

History. Acts 1989, No. 247, § 7; 1999, No. 646, §§ 40-42; 2009, No. 711, § 1.

inserted "especially to Arkansans living near the New Madrid Fault" in (a)(2)(E), and made a related change.

Amendments. The 2009 amendment

12-77-105. Purpose.

The purpose of this section and §§ 12-77-106 and 12-77-107 is to:

(1) Increase disaster preparedness in Arkansas; and

(2) Increase earthquake preparedness in all areas along the New Madrid Fault that have significant earthquake risk but a low level of public awareness.

History. Acts 2009, No. 711, § 2.

12-77-106. Duties.

The Arkansas Department of Emergency Management shall coordinate a Disaster Preparedness Program designed to protect the lives and property of Arkansas citizens in case of flooding and other disasters and create public preparedness materials that can be disseminated to the public, including without limitation:

- (1) Training and education of state and local government officials, school districts, personnel, and citizens of Arkansas regarding preparation and protective measures that can be taken before, during, and after an earthquake;
- (2) Planning coordination, guidance, and assistance to all state and local government officials in preparation for, response to, and recovery from flooding; and
- (3) Coordination of the Disaster Preparedness Program activities with comparable agencies of the federal government and other states.

History. Acts 2009, No. 711, § 2.

12-77-107. Reports.

- (a) The Arkansas Department of Emergency Management shall present a report on disaster preparedness including a review of the New Madrid Fault.
- (b) The department shall make recommendations for improvements to the cochairs of the Legislative Council on or before November 1 each year.

History. Acts 2009, No. 711, § 2.

CHAPTER 80

EARTHQUAKE RESISTANT DESIGN FOR PUBLIC STRUCTURES

SECTION.

12-80-103. Seismic zones established.

12-80-104. Design requirements.

SECTION.

12-80-106. Violations and penalties.

12-80-103. Seismic zones established.

(a)(1) Areas within the boundaries of this state shall be divided into zones of anticipated damage that will occur in various locations with respect to the New Madrid Seismic Zone.

(2) This division will be based on the Arkansas Fire Prevention Code.

(b)(1) Zone 3, the area of greatest anticipated seismic damage, shall include the following counties: Clay, Greene, Craighead, Mississippi, Poinsett, Cross, Crittenden, St. Francis, Randolph, Lawrence, Jackson, Woodruff, and Lee.

(2) Zone 2, the area of moderate anticipated seismic damage, shall include the following counties: Sharp, Independence, White, Lonoke,

Prairie, Arkansas, Monroe, Phillips, Fulton, Izard, Stone, and Cleburne.

(3) Zone 1, the area of low anticipated seismic damage, shall include all remaining counties within the boundaries of this state.

History. Acts 1991, No. 1100, § 3;
1999, No. 1485, § 2; 2005, No. 1290, § 1.

12-80-104. Design requirements.

(a)(1) Neither the state or any county, city, township, village, or private entity shall construct, add to, alter, retrofit, or remodel any public structure unless the structural elements are designed to resist the anticipated forces of the designated seismic zone in which the structure is located.

(2) Design loads and seismic design requirements shall be, as a minimum, those listed in the Chapter of Structure Loads and referenced chapters from the Arkansas Fire Prevention Code.

(b)(1) All construction plans for public buildings and structures shall comply with the Arkansas Architectural Act, § 17-15-101 et seq.

(2) The design of structural elements of public buildings and structures shall be performed by a professional engineer as defined in § 17-30-101 who is competent in seismic structural design according to current standards of technical competence.

(3) The structural plans of each public building or structure shall bear the engineer's Arkansas seal and signature and a statement of reference to what seismic zone the structure is designed to satisfy.

(4) Educational and institutional structures in Seismic Hazard Exposure Group III shall have nonstructural interior components, such as bookshelves, light fixtures, shelving, hot water tanks, oxygen tanks, etc., to meet earthquake resistant guidelines.

History. Acts 1991, No. 1100, § 4; substituted "as defined in § 17-30-101"
1999, No. 1485, § 3; 2011, No. 897, § 10. for "registered in the State of Arkansas" in
Amendments. The 2011 amendment (b)(2).

12-80-106. Violations and penalties.

(a) Any owner knowingly constructing a public building within this state without complying with the provisions of this chapter shall be guilty of a violation and shall upon conviction be sentenced to pay a fine of not less than one thousand dollars (\$1,000).

(b) Each day of the unlawful construction practice shall constitute a distinct and separate offense.

History. Acts 1991, No. 1100, § 6;
2005, No. 1994, § 79.

CHAPTER 83

EMERGENCY VOLUNTEER RESERVE ACT OF 1985

SECTION.

12-83-104. Recruitment — Service — Deployment — Discharge.

12-83-104. Recruitment — Service — Deployment — Discharge.

(a)(1) The Arkansas Department of Emergency Management shall establish a system to recruit personnel with special skills or experience related to emergency response and recovery operations and provide initial familiarization training and periodic proficiency training as necessary for members of the Emergency Volunteer Reserve Cadre to ensure their readiness for immediate deployment for response and recovery activities.

(2) The personnel shall be enrolled as emergency responder volunteers in accordance with § 12-75-129, and shall be eligible for immunities and exemptions in accordance with § 12-75-128 and workers' compensation benefits in accordance with § 12-75-129.

(b) The department shall establish an administrative management system to recruit and maintain qualified personnel and establish a fiscal management system to ensure prompt and reasonable reimbursement of authorized expenses.

(c) Persons recruited for the cadre may provide, but are not limited to providing, services in disaster application centers, disaster field offices, disaster survey teams, and fixed or mobile emergency operating centers and communications facilities, and may utilize other specific skills for which they may qualify or be trained to assume.

(d) Members are subject to deployment within the State of Arkansas and may, upon invocation of mutual aid agreements with other states, accompany state employees at host state or federal expense on out-of-state services.

(e) When called into active service by the Director of the Arkansas Department of Emergency Management, members of the cadre shall be under the operational and administrative management of the department and such employees of that office who may be designated to supervise their duties.

(f)(1) The director shall have the authority to immediately relieve members of the cadre for actual misconduct, perceived incompetence, or inability to perform their assigned duties.

(2) When relieved by authority other than the director's, members shall have the right of appeal to the director for reinstatement.

History. Acts 1995, No. 115, § 4; 1995 No. 169, § 4; 1999, No. 646, §§ 51-53; 2009, No. 165, § 59.

Amendments. The 2009 amendment, in (a)(2), substituted "responder" for "services" and "12-75-129" for "12-75-127."

CHAPTER 86

EMERGENCY PREPAREDNESS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. EMERGENCY PREPAREDNESS FOR CHILD CARE FACILITIES ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — EMERGENCY PREPAREDNESS FOR CHILD CARE FACILITIES ACT

SECTION.

- 12-86-201. Title.
12-86-202. Legislative intent.
12-86-203. Division of Child Care and Early Childhood Education policies.

SECTION.

- 12-86-204. Arkansas Department of Emergency Management policies.

12-86-201. Title.

This subchapter shall be known and may be cited as the “Emergency Preparedness for Child Care Facilities Act”.

History. Acts 2007, No. 816, § 1.

12-86-202. Legislative intent.

The General Assembly finds that:

(1) Early care and education facilities at which children from birth to four (4) years of age and school-age children may spend part or all of their days may not be known to emergency preparedness agencies and thus may be overlooked in first response activities and in recovery planning following major disasters;

(2) The health and social-emotional, cognitive, and physical development of young children may be compromised by severe traumatic experiences;

(3) Teachers and caregivers of young children will improve the children’s health and well being by being prepared for orderly evacuations and rapid reunification of young children with their parents during emergencies;

(4) Child care facilities are crucial to the economic redevelopment of communities following major disasters; and

(5) State child care and emergency management agencies should take steps to share data and coordinate planning, response, and recovery of child care facilities during and after major disasters.

History. Acts 2007, No. 816, § 2.

12-86-203. Division of Child Care and Early Childhood Education policies.

The Director of the Division of Child Care and Early Childhood Education of the Department of Human Services shall coordinate efforts with other state agencies and appropriate organizations to:

(1)(A) Share with the Arkansas Department of Emergency Management on a quarterly basis an integrated list of all licensed child care facilities and all known license-exempt child care facilities, including without limitation physical addresses, maximum capacity, emergency contact information, and hours of operation.

(B) The integrated list is to be sorted by county;

(2) Include early childhood emergency preparedness courses and workshops that address specific risk factors and evacuation procedures in particular geographic areas among approved courses and workshops for meeting requirements for in-service training for licensed child care providers in those geographic areas;

(3) Incorporate specific indicators of emergency preparedness linked to specific disaster risk factors in licensed child care providers' geographic areas into each level of any quality ratings above minimum licensing standards; and

(4)(A) Require a child care facility to have a written plan for evacuation in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the child care facility;

(B) Require the plan to include without limitation:

(i) A designated relocation site and evacuation route;

(ii) Procedures for notifying parents of the relocation and ensuring family reunification;

(iii) Procedures to address the needs of individual children, including children with special needs;

(iv) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(v) Coordination with local emergency management officials; and

(vi) A program to ensure that appropriate staff are familiar with the plan's components.

History. Acts 2007, No. 816, § 3; 2009, No. 165, § 60; 2009, No. 801, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207(b) and Acts 2009, No. 165, § 62, the amendments to former subdivisions (2)-(4) of this section by Acts 2009, No. 165, § 60, are superceded by the amendments to those subdivisions by Acts 2009, No. 801, § 1.

Amendments. The 2009 amendment by No. 165 inserted "designated emergency" near the end of (2) and (3) and in

(4); inserted "licensed child care" near the end of (4) and in (6); in (2), inserted "child-care" following "license-exempt" and "emergency" following "three (3) designated"; and substituted "Arkansas Department of Emergency Management" for "state emergency management agency" in (3).

The 2009 amendment by No. 801 deleted "and status as tuition subsidy, meal subsidy, state-fund pre-kindergarten, and quality-rated facilities" at the end of

(1)(A); deleted (2) through (4) and redesignated the remaining subdivision; added present (4); and made related changes.

12-86-204. Arkansas Department of Emergency Management policies.

The Director of the Arkansas Department of Emergency Management shall coordinate efforts with other state agencies and appropriate organizations to:

(1) Disseminate county-level lists of all licensed child care facilities and all known license-exempt child care facilities, including without limitation physical address, maximum capacity, hours of operation, and emergency contact information, to county governments for use in search and rescue during emergencies and disasters;

(2) Share a periodically updated statewide list of designated emergency shelters, both local shelters and mass evacuation shelters, with the Division of Child Care and Early Childhood Education of the Department of Human Services, state child care subsidy program, and state child and adult nutrition program when the list is available; and

(3) Include all licensed child care facilities and all known license-exempt child care facilities where critical facilities such as schools, hospitals, and nursing homes are mentioned in the state response plan, emergency preparedness exercises, or other guiding documents and activities.

History. Acts 2007, No. 816, § 4; 2009, No. 165, § 61.

Amendments. The 2009 amendment inserted "child care" following "license-exempt" in (1); substituted "Division of Child Care and Early Childhood Educa-

tion of the Department of Human Services" for "state child care licensing agency" in (2); and inserted "all licensed child care facilities and all known license-exempt" in (3).

CHAPTER 87

UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT

SECTION.

12-87-101. Title.

12-87-102. Definitions.

12-87-103. Applicability to volunteer health practitioners.

12-87-104. Regulation of services during emergency.

12-87-105. Volunteer health practitioner registration systems.

12-87-106. Recognition of volunteer health practitioners licensed in other states.

12-87-107. No effect on credentialing and privileging.

12-87-108. Provision of volunteer health

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or veterinary services — Administrative sanctions.

12-87-109. Relation to other laws.

12-87-110. Regulatory authority.

12-87-111. Limitations on civil liability for volunteer health practitioners.

12-87-112. Workers' compensation coverage.

12-87-113. Uniformity of application and construction.

12-87-114. [Reserved.]

12-87-115. Effective date.

Cross References. Arkansas Emergency Services Act of 1973, § 12-75-101 et seq. Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq.

12-87-101. Title.

This chapter may be cited as the "Uniform Emergency Volunteer Health Practitioners Act".

History. Acts 2009, No. 432, § 1.

12-87-102. Definitions.

In this chapter:

(1) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or the Arkansas Department of Emergency Management; or

(B) regularly plans and conducts its activities in coordination with an agency of the federal government or the Arkansas Department of Emergency Management.

(2) "Emergency" means an event or condition that is a disaster emergency under § 12-75-107 or § 12-75-108.

(3) "Emergency declaration" means a declaration of emergency issued by a person authorized to do so under the laws of this state, executive order or proclamation of the Governor, or § 12-75-107 or § 12-75-108.

(4) "Emergency Management Assistance Compact" means the interstate compact approved by Congress by Public Law No. 104-321, 110 Stat. 3877, codified at § 12-49-401 et seq.

(5) "Entity" means a person other than an individual.

(6) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

(7) "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

(8) "Health services" means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(A) The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) counseling, assessment, procedures, or other services;

(B) Sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(C) Funeral, cremation, cemetery, or other mortuary services.

(9) "Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.

(10) "License" means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.

(11) "Person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Veterinary services" means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(A) diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery, or therapy;

(B) use of a procedure for reproductive management; and

(C) monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(15) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

12-87-103. Applicability to volunteer health practitioners.

This chapter applies to volunteer health practitioners registered with a registration system that complies with § 12-87-105 and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

History. Acts 2009, No. 432, § 1.

12-87-104. Regulation of services during emergency.

(a) While an emergency declaration is in effect, the Department of Health may limit, restrict, or otherwise regulate:

- (1) the duration of practice by volunteer health practitioners;
- (2) the geographical areas in which volunteer health practitioners may practice;
- (3) the types of volunteer health practitioners who may practice; and
- (4) any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

(b) An order issued pursuant to subsection (a) may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

(1) consult and coordinate its activities with the Department of Health to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) comply with any laws other than this chapter relating to the management of emergency health or veterinary services, including the Emergency Medical Services Revolving Fund Act, § 20-13-101 et seq.

History. Acts 2009, No. 432, § 1.

12-87-105. Volunteer health practitioner registration systems.

(a) To qualify as a volunteer health practitioner registration system, a system must:

(1) accept applications for the registration of volunteer health practitioners before or during an emergency;

(2) include information about the licensure and good standing of health practitioners which is accessible by authorized persons;

(3) be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and

(4)(A) be designated by the Arkansas Department of Emergency Management as a registration system for purposes of this chapter.

(B) The Arkansas Department of Emergency Management may consider and may approve a request for the designation of a regis-

tration system submitted by a disaster relief organization, licensing board, national or regional association of licensing boards or health-care practitioners, health facility that provides comprehensive inpatient and outpatient healthcare services, or host entity, and may on its own initiative approve registration systems established by this state or other states funded through the United States Department of Health and Human Services under Section 3197 of the Public Health Services Act, 42 U.S.C. § 247d, or by medical reserve corps units formed under Section 2801 of the Public Health Services Act, 42 U.S.C. § 300hh.

(b) While an emergency declaration is in effect, the Arkansas Department of Emergency Management, a person authorized to act on behalf of the Arkansas Department of Emergency Management, or a host entity, may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection (a). Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

(c) Upon request of a person in this state authorized under subsection (b), or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

(d) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

History. Acts 2009, No. 432, § 1.

A.C.R.C. Notes. Subdivision (a)(4) of this section significantly differs from Section 5(a)(4) of the official version of the

Uniform Emergency Volunteer Health Practitioners Act drafted by the National Conference of Commissioners on Uniform State Laws.

12-87-106. Recognition of volunteer health practitioners licensed in other states.

(a) While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with § 12-87-105 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under subsection (a) is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

History. Acts 2009, No. 432, § 1.

12-87-107. No effect on credentialing and privileging.

(a) In this section:

(1) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(2) "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.

(b) This chapter does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

History. Acts 2009, No. 432, § 1.

12-87-108. Provision of volunteer health or veterinary services — Administrative sanctions.

(a) Subject to subsections (b) and (c), a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.

(b) Except as otherwise provided in subsection (c), this chapter does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

(c) The Arkansas Department of Emergency Management may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this chapter. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this chapter.

(e) A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) the practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) from all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

(f) In addition to the authority granted by law of this state other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) may impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) may impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(g) In determining whether to impose administrative sanctions under subsection (f), a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

History. Acts 2009, No. 432, § 1.

12-87-109. Relation to other laws.

(a) This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided in subsection (b), this chapter does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

(b) The Arkansas Department of Emergency Management, pursuant to the Emergency Management Assistance Compact and the Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq., may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

History. Acts 2009, No. 432, § 1.

A.C.R.C. Notes. This section differs from Section 9 of the official version of the Uniform Emergency Volunteer Health Practitioners Act drafted by the National Conference of Commissioners on Uniform State Laws. This section includes a refer-

ence to the Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq., that is not in the official version. However, the Legislative Note to the official version indicates that a state should reference any emergency compacts in which the state is a party.

12-87-110. Regulatory authority.

The Arkansas Department of Emergency Management may promulgate rules to implement this chapter. In doing so, the Arkansas Department of Emergency Management shall consult with and consider the recommendations of the entity established to coordinate the implementation of the Emergency Management Assistance Compact, and the Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq. and shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of this chapter and make the emergency response systems in the various states reasonably compatible.

History. Acts 2009, No. 432, § 1.

A.C.R.C. Notes. This section differs from Section 10 of the official version of the Uniform Emergency Volunteer Health Practitioners Act drafted by the National Conference of Commissioners on Uniform State Laws. This section includes a refer-

ence to the Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq., that is not in the official version. However, the Legislative Note to the official version indicates that a state should reference any emergency compacts in which the state is a party.

12-87-111. Limitations on civil liability for volunteer health practitioners.

(a) Subject to subsection (b), a volunteer health practitioner who receives compensation of five hundred dollars (\$500) or less per year for providing health or veterinary services pursuant to this chapter is not liable for damages for an act or omission of the practitioner in providing those services. Reimbursement of, or allowance for, reasonable expenses, or continuation of salary or other remuneration while on leave, is not compensation under this subsection.

(b) This section does not limit the liability of a volunteer health practitioner for:

(1) willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;

(2) an intentional tort;

(3) breach of contract;

(4) a claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or

(5) an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

(c) A person that, pursuant to this chapter, operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

History. Acts 2009, No. 432, § 1.

A.C.R.C. Notes. This section adopts Alternative B of Section 11 of the official

version of the Uniform Emergency Volunteer Health Practitioners Act drafted by the National Conference of Commission-

ers on Uniform State Laws. An optional subsection (d) in Alternative B was not adopted.

12-87-112. Workers' compensation coverage.

(a) In this section, "injury" means a physical or mental injury or disease for which an employee of this state who is injured or contracts the disease in the course of the employee's employment would be entitled to benefits under the workers' compensation or occupational disease law of this state.

(b) A registered volunteer health practitioner who dies or is injured as the result of providing health or veterinary services pursuant to this chapter is deemed to be an employee of this state for the purpose of receiving benefits for the death or injury under the workers' compensation or occupational disease law of this state if:

(1) the practitioner is not otherwise eligible for such benefits for the injury or death under the law of this or another state; and

(2) the practitioner, or in the case of death the practitioner's personal representative, elects coverage under the workers' compensation or occupational disease law of this state by making a claim under that law; and

(3) the practitioner is acting under the control or direction of the Arkansas Department of Emergency Management, the Governor, or another state government agency.

(c) The Arkansas Department of Emergency Management shall certify to the Public Employee Claims Division of the State Insurance Department the names and registration information for each registered volunteer health practitioner working in this state under this chapter.

(d)(1) Benefits payable for the injury or death of a registered volunteer health practitioner covered by this chapter shall be limited to the provisions of the Workers' Compensation Law, § 11-9-101 et seq. Benefits are payable if the injury or death occurred while the person was:

(A) actually engaged in emergency service duties, either during training or during a period of emergency; and

(B) under the supervision and instruction and subject to the order or control of, or serving pursuant to a request of, the Governor, the Arkansas Department of Emergency Management, or the chief executive officer of a county or local government unit making use of registered volunteer health practitioners.

(2) The remedy provided in this section shall be the exclusive remedy as against the state and political subdivisions of the state.

(3)(A) For the purpose of workers' compensation coverage in cases of injury to or death of an individual, a registered volunteer health practitioner is deemed a state employee and shall receive compensation and a survivor of a registered volunteer health practitioner shall receive death benefits in the same manner as a regular state employee for injury or death arising out of and in the course of activities as registered volunteer health practitioners.

(B) If the registered volunteer health practitioner was under the order or control of a state agency when injured or killed, compensation and benefits shall be charged against the experience rate of the Arkansas Department of Emergency Management and paid from the appropriate state workers' compensation fund.

(4)(A) For the purpose of subdivision (d)(3) of this section, the weekly compensation benefits for a registered volunteer health practitioner who receives no monetary compensation for services rendered as a worker under this chapter shall be calculated based upon the wages received from his or her regular or usual employment, the same as a regular state employee, with respect to injury, disability, or death.

(B) The reimbursement of twenty-five dollars (\$25.00) or less for out-of-pocket expenses for gasoline, oil, uniforms, required equipment, or similar expenses incurred in response to an emergency situation shall not be construed to be monetary compensation for the registered volunteer health practitioner.

History. Acts 2009, No. 432, § 1.

A.C.R.C. Notes. This section significantly differs from Section 12 of the official version of the Uniform Emergency Volunteer Health Practitioners Act drafted by the National Conference of Commissioners on Uniform State Laws. Subdivision (b)(3) of this section is not in the official version, subsection (c) of this

section does not match the subsection (c) in the official version, and subsection (d) of this section is not in the official version. Some of these differences may be attributed to the Legislative Notes to the official version indicating that states should clarify how this section fits within existing state workers' compensation or occupational disease laws.

12-87-113. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 2009, No. 432, § 1.

12-87-114. [Reserved.]

12-87-115. Effective date.

This chapter takes effect October 1, 2009.

History. Acts 2009, No. 432, § 1.

TITLE 13

LIBRARIES, ARCHIVES, AND CULTURAL RESOURCES

CHAPTER.

2. LIBRARIES.
3. HISTORY COMMISSIONS.
4. PUBLIC RECORDS MANAGEMENT AND ARCHIVES.
5. MUSEUMS.
6. ARCHEOLOGICAL RESEARCH.
7. HISTORIC PRESERVATION.
8. ARKANSAS ARTS COUNCIL.
9. ARKANSAS ENTERTAINERS HALL OF FAME BOARD.
13. ARKANSAS CIVIL WAR SESQUICENTENNIAL COMMISSION.
14. HERITAGE TRAILS SYSTEM ACT.

CHAPTER 2

LIBRARIES

SUBCHAPTER.

1. GENERAL PROVISIONS.
4. COUNTY LIBRARIES.
5. MUNICIPAL LIBRARIES AND READING ROOMS.
7. CONFIDENTIALITY OF PATRONS' RECORDS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 13-2-101. Failure to return books or pay replacement costs.

13-2-101. Failure to return books or pay replacement costs.

(a)(1) It is unlawful for any person who checks out or otherwise removes any books or other materials from any library owned by the state or any city, county, or other political subdivision of the state to fail or refuse to return those books or materials to the library or to pay the replacement costs of lost books and library materials within the time prescribed by the library rules.

(2) However, before a charge of violating the provisions of this section shall be filed against any person, the library shall send written notice, by ordinary mail, addressed to the last known address of the person who checked out or otherwise removed the books or materials from the library, notifying the person that if the books or materials are not returned to the library within thirty (30) days from the date of the notice, charges will be filed against the person under the provisions of this section and upon conviction the person may be fined in an amount as provided in this section.

(b)(1) Any person violating the provisions of this section shall be guilty of a violation and subject to a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

(2) Each violation of this section shall constitute a separate offense.

History. Acts 1987, No. 555, §§ 1, 2; 2005, No. 1994, § 80.

SUBCHAPTER 4 — COUNTY LIBRARIES

SECTION.

13-2-401. Establishment.

13-2-404. County public library fund — Claims.

13-2-401. Establishment.

(a) The county quorum courts of the several counties shall have the power and authority to establish, maintain, and operate county public libraries or public library services or systems in the manner and with the functions prescribed in this subchapter, and counties may appropriate money for these purposes.

(b) The county quorum court shall also have the power to establish in cooperation with another county or other counties a joint public library or a joint library service or system for the benefit of the cooperating counties.

(c)(1) Establishment of county libraries or library systems shall be evidenced by an ordinance of the county quorum court or by an agreement between the governing bodies of the several counties participating in a regional library system or coordinating library services under an interlocal agreement.

(2) Appropriations for the establishment and maintenance of a county library or library system shall be in the manner prescribed by law for expenditures by counties.

(d) In addition to county library boards created under this section, § 13-2-402, and § 13-2-404, a county quorum court may by ordinance establish a county library board to conduct the affairs of the county public library or its library services or system in accordance with the law for establishing other county advisory or administrative boards found at § 14-14-705.

History. Acts 1927, No. 244, § 1; Pope's Dig., § 2629; A.S.A. 1947, § 17-1001; Acts 1997, No. 402, § 1; 2011, No. 837, § 1.

Amendments. The 2011 amendment deleted (d)(2).

13-2-404. County public library fund — Claims.

(a)(1) All tax and other county-appropriated funds of the county public library shall be in the custody of the county treasurer and shall constitute a separate fund to be known as the "county public library fund".

(2)(A) A county that supports a county public library or library system with a library tax under Arkansas Constitution, Amendment 38, shall by ordinance of the quorum court of the county levy a tax at a millage rate approved by the voters on all taxable property within the county to be used for the support, operation, and maintenance of the public library or public library system located in the county.

(B) As used in Arkansas Constitution, Amendment 38, "maintaining and operating" a public county library or a county library service or system includes the:

- (i) Repair and upkeep of property and equipment;
- (ii) Overhead and ongoing costs; and
- (iii) General and administrative expenses.

(C) Except as otherwise provided in the ordinance, "maintaining and operating" includes without limitation:

- (i) Postage, telephone, and Internet services;
- (ii) Printing;
- (iii) Library-owned motor vehicle expenses;
- (iv) Advertising;
- (v) Minor and major repairs;
- (vi) Maintenance contracts;
- (vii) Lawn care services;
- (viii) Utilities and fuel;
- (ix) Rent and lease payments;
- (x) Insurance premiums;
- (xi) Association and membership dues;
- (xii) Contractual services not otherwise classified;
- (xiii) Consumable supplies, materials, and commodities;
- (xiv) Court costs;
- (xv) Equipment not capitalized;
- (xvi) Applicable petty cash reimbursements, laundry, and taxes;
- (xvii) Travel, subsistence, meals, lodging, and transportation of county library employees or officials traveling on official business; and
- (xviii) Such other items and expenses as may be considered maintaining and operating a public county library or a county library service or system under Arkansas Constitution, Amendment 38.

(3) In addition to the levy authorized by this section, the quorum court in a county may appropriate from any available funds for the support, operation, and maintenance of a public library or public library system located in the county.

(4) Further, the quorum court in a county may appropriate from the county funds and any other available funds for the support, operation, and maintenance of a regional public library system in which the county has agreed to participate in coordination with the libraries of other counties and other cities.

(b)(1) Funds received by the county public library by gift, bequest, devise, or donation or from fees or fines may remain in the custody of the county library board, if a board has been created, or deposited with

the county treasurer for the county public library fund if the county library board so chooses or if a board has not been created.

(2) Funds retained by the county library board shall be used by it for the establishment, expansion, construction, maintenance, and operation of the county library.

(c)(1) No claim against the fund shall be approved by the county court until acted upon by the governing library board, if a governing library board has been created, and payment authorized by the governing library board.

(2) When certified as a valid claim by the governing library board, the claim shall be acted upon as all other claims against the county.

(3)(A)(i) Pursuant to an ordinance adopted by the quorum court at the request of the governing library board, the governing library board may certify to the county treasurer a claim against the fund for an amount equal to the undistributed balance of the fund.

(ii) The ordinance shall specify the frequency that the claim may be made. The frequency shall not be more than monthly.

(B) The claim shall be acted upon as all other claims against the county.

(C) When the claim is paid, the funds shall be in the custody of the governing library board and shall be subject to expenditure pursuant to an appropriate resolution or budget adopted by the governing library board.

History. Acts 1927, No. 244, § 2; Pope's Dig., § 2630; Acts 1981, No. 49, § 1; A.S.A. 1947, § 17-1002; Acts 1995, No. 232, § 2; 1997, No. 402, § 3; 2005, No. 1162, § 1; 2009, No. 570, § 1; 2009, No. 764, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2009, No. 764. Subsec-

tion (a)(2)(B) was also added by Acts 2009, No. 570, to read as follows: "(B) Maintenance and operation costs include rental costs paid for the library facility."

Amendments. The 2009 amendment by No. 764 inserted (a)(2)(B) and (C) and redesignated the remaining text of (a)(2) accordingly.

SUBCHAPTER 5 — MUNICIPAL LIBRARIES AND READING ROOMS

SECTION.

13-2-501. Establishment — Appropriations.

SECTION.

13-2-503. Powers of trustees — Librarian and staff.

Effective Dates. Acts 2009, No. 1480, § 117; Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this

state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the

bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

13-2-501. Establishment — Appropriations.

(a)(1) The city council or governing body of any city of the first class may by ordinance establish and maintain a public library for the use and benefit of the inhabitants of the city.

(2) The governing body of any city which levies a city library tax in accordance with Arkansas Constitution, Amendment 30, shall establish, operate, and maintain a city public library or library services for the citizens of the city.

(b)(1) In a city of the first class, on petition of five percent (5%) of the voters requesting the establishment of a public library, the city council or governing body of the municipality within thirty (30) days after the filing of the petition shall call an election to be held in accordance with § 7-11-201 et seq.

(2)(A) The election shall be advertised and conducted as special elections are required by law to be advertised and conducted.

(B) The ballots shall be marked "FOR Public Library", "AGAINST Public Library".

(3) If a majority of the electors voting at the election vote in favor of the establishment of a public library, it shall be the duty of the city council or the governing body of the municipality immediately to establish a public library and continue to maintain it in accordance with the provisions of this section.

(c) When a public library has been established, the city council or the governing body of the municipality may allot for library purposes a prescribed proportion of its municipal revenues to be used exclusively for the maintenance of the public library.

(d)(1) A city which supports a city public library or library system with a city library tax under Arkansas Constitution, Amendment 30, shall by ordinance of the governing body of the municipality appropriate all tax revenues raised by the millage approved by the voters on all taxable property within the city to be used for the support, operation, and maintenance of the public library or public library system located in the city or for library services from within a library system in which the city participates.

(2) In addition to the levy authorized in this subsection, the governing body of the municipality may make contributions from any available funds for the support, operation, and maintenance of a city public library or public library system located in the city or for library services from within a library system in which the city participates.

(3) Further, the governing body of a municipality may make contributions from the city funds and any other available funds for the support, operation, and maintenance of a joint city-county or regional

public library system in which the city has agreed to participate in coordination with the libraries of other cities and other counties.

History. Acts 1931, No. 177, § 1; Pope's Dig., § 9590; A.S.A. 1947, § 19-3201; Acts 1991, No. 417, § 1; 1997, No. 402, § 7; 2005, No. 2145, § 17; 2007, No. 1049, § 34; 2009, No. 1480, § 49.

Amendments. The 2007 amendment rewrote (b).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (b)(1).

13-2-503. Powers of trustees — Librarian and staff.

(a)(1) All moneys received for library purposes, whether by taxation or otherwise, shall belong to and be designated as the library fund.

(2) The moneys shall be kept separate and apart from other funds of the city and drawn upon by the proper officers of the library upon the properly authenticated invoices of the library board of trustees.

(b)(1) The board shall have exclusive control of the expenditures of all moneys collected to the credit of the library fund and of the construction of any library building.

(2) The board shall have the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for library purposes.

(c)(1)(A) The board shall have the power to purchase or lease grounds or to purchase, lease, erect, and occupy appropriate buildings for the use of the library.

(B) When a building erected or purchased by the board is not adapted to its purpose or needs, the board may remodel or reconstruct the building.

(2) The board may also sell or otherwise dispose of any real or personal property that it deems no longer necessary or useful for library purposes.

(d)(1) The board shall have the power to appoint a librarian qualified by education, training, experience, and personality, who shall serve at the will of the board.

(2) The board shall have the power to appoint necessary assistants and other members of the staff, basing their appointment on the recommendation of the librarian.

(e) The board shall have the power to make necessary rules and regulations for administering the library and shall make provisions for representation at library conventions.

History. Acts 1931, No. 177, § 5; Pope's Dig., § 9594; A.S.A. 1947, § 19-3205; Acts 2005, No. 1246, § 1.

SUBCHAPTER 7 — CONFIDENTIALITY OF PATRONS' RECORDS

SECTION.

13-2-704. Disclosure permitted.

13-2-704. Disclosure permitted.

A library may disclose personally identifiable information concerning any patron to:

- (1) The patron;
- (2) Any person with the informed, written consent of the patron;
- (3) A law enforcement agency or civil court, under a search warrant;

or

(4) Any person, including without limitation the patron, who has received an automated telephone notification or other electronic communication for overdue materials or reserve materials if the person making the request can verify the telephone number or email address to which the notice was sent.

History. Acts 1989, No. 903, § 2; 2003, No. 677, § 1; 2009, No. 757, § 1.

deleted "given at the time the disclosure is sought" at the end of (2); and made minor stylistic changes in (3) and (4).

Amendments. The 2009 amendment

CHAPTER 3

HISTORY COMMISSIONS

SUBCHAPTER.

1. ARKANSAS HISTORY COMMISSION.
2. BLACK HISTORY COMMISSION OF ARKANSAS.

SUBCHAPTER 1 — ARKANSAS HISTORY COMMISSION

SECTION.

13-3-109. Permanent marker to commemorate B.B. King.

Preambles. Acts 2005, No. 673 contained a preamble which read: "WHEREAS, B.B. King and 'Lucille', his guitar and constant companion since 1949, have become legends in the world of blues; and

"WHEREAS, the story of B.B. King naming his guitar 'Lucille' is legendary in its own right and inextricably linked to the history of a small town in Arkansas; and

"WHEREAS, in 1949 when B.B. King's career was in its infancy, one of his stops on the road was at a dance hall in Twist, Arkansas, on a cold winter night. In order to keep the dance hall warm, a large barrel of kerosene was placed in the center of the room and was filled about half-way with fuel. The kerosene was then lighted to heat the room, a practice which was not uncommon in those days; and

"WHEREAS, as B.B. King entertained the crowd, two (2) men started a brawl over a woman named 'Lucille' and knocked over the barrel of burning kerosene. Like a river of fire, the burning fuel spilled over the floor. Everyone, including B.B. King, ran for the front door. Once outside, B.B. King realized that he had left his guitar, a Gibson acoustic, at the mercy of the inferno. Back inside the collapsing building he went to rescue his guitar, almost losing his life in the process. The blaze that night claimed two (2) lives; and

"WHEREAS, B.B. King named his guitar 'Lucille', and also every guitar he has owned since that night, to remind him never again to risk his life for a material possession; and

"WHEREAS, upon speaking about 'Lucille', B.B. King says, I'm very crazy about

Lucille. I've had many guitars ... and I always call them Lucille. She's taken me a long way, even brought me some fame ... most of all, she's kept me alive, being able

to eat ... Lucille practically saved my life two or three times ...';
"NOW THEREFORE,"

13-3-101. Creation — Purpose.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Arkansas's Public Records Retention Program: *Finding the FOIA's Absent Partner*, 28 U. Ark. Little Rock L. Rev. 175.

13-3-109. Permanent marker to commemorate B.B. King.

The Arkansas History Commission shall erect a permanent marker in the town of Twist, Arkansas, to commemorate the legendary B.B. King and the event that led to his naming his famous guitar "Lucille" while he was performing there.

History. Acts 2005, No. 673, § 1.

SUBCHAPTER 2 — BLACK HISTORY COMMISSION OF ARKANSAS

SECTION.

- 13-3-201. Purpose.
- 13-3-202. Members.
- 13-3-203. Meetings — Rules and bylaws — Secretary.
- 13-3-204. Duties — Records, papers, archives, and historical materials property of state.
- 13-3-205. State Historian's duties — Lo-

SECTION.

- cation of Black History Commission of Arkansas.
- 13-3-206. Historical contributions by the black race — Arkansas history courses.
- 13-3-207. Curtis H. Sykes Memorial Grant Program.

13-3-201. Purpose.

The Black History Commission of Arkansas is created and established at the seat of government of this state for the purpose of:

(1) Advising the Arkansas History Commission with respect to gathering, developing, and keeping the history of a segment of Arkansas society whose history has been overlooked and forgotten and has been simply neglected because of a lack of concern;

(2) Collecting materials bearing on the history of black Arkansans from the earliest times;

(3) Encouraging historical work and research in the background of black Arkansans to help the young citizens of the state appreciate their heritage; and

(4) Performing work in relation to the history of black Arkansans.

History. Acts 1991, No. 1233, § 1; 2001, No. 1553, § 22; 2007, No. 1601, § 1.

Amendments. The 2007 amendment substituted "Black History Commission of

Arkansas" for "Arkansas Black History Advisory Committee" in the introductory language.

13-3-202. Members.

(a) The Black History Commission of Arkansas shall consist of seven (7) members who shall be residents and electors of this state. The members shall be appointed by the Governor, by and with the advice and consent of the Senate.

(b) The term of office of each member of the commission shall commence on January 15 following the expiration date of his or her predecessor's term and shall end on January 14 of the seventh year following the year in which the term commenced.

(c) The membership of the commission shall be made up of persons who are citizens of the state at large and who have demonstrated an interest in the collection, recordation, preservation, and development of the history of black Arkansans.

(d) Any vacancies arising in the membership of the commission for any reason other than expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor, and to be thereafter effective until the expiration of the regular terms, subject, however, to the confirmation of the Senate when it is next in session.

(e) The commission shall select from its membership a chair and a vice-chair.

(f) Members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1991, No. 1233, § 2; 1995, No. 980, § 1; 1995, No. 1296, § 43; 1997, No. 250, § 75; 2007, No. 1601, § 2.

Amendments. The 2007 amendment substituted "Black History Commission of

Arkansas" for "Arkansas Black History Advisory Committee" in (a); and substituted "commission" for "committee" throughout the section.

13-3-203. Meetings — Rules and bylaws — Secretary.

(a) The Black History Commission of Arkansas shall meet at such times and places as in each instance may suit the Black History Commission of Arkansas's convenience and its purposes, and all meetings shall be open to the public.

(b) The Black History Commission of Arkansas shall adopt and may modify rules and bylaws for the conduct of its business, subject to the approval of the Arkansas History Commission.

(2) The Black History Commission of Arkansas shall keep a record of its transactions, findings, and determinations, which record shall be public.

(c) The rules shall provide for regular meetings and for special meetings at the call of the Chair of the Black History Commission of Arkansas or in his or her absence or incapacity, the vice-chair, or upon written request of at least four (4) members.

(d) The State Historian shall be ex officio secretary of the Black History Commission of Arkansas but shall have no vote on matters coming before it.

(e) A quorum of the Black History Commission of Arkansas shall consist of not less than four (4) members present at any regular or special meeting. The affirmative vote of that number shall be necessary for the disposition of any business.

History. Acts 1991, No. 1233, § 3; 2007, No. 1601, § 3. **Arkansas**" for "Arkansas Black History Advisory Committee" in (a); and substituted "commission" for "committee" throughout the section.

Amendments. The 2007 amendment substituted "Black History Commission of

13-3-204. Duties — Records, papers, archives, and historical materials property of state.

(a) It shall be the function, power, and duty of the Black History Commission of Arkansas to assist the Arkansas History Commission to:

(1) Collect, classify, and preserve, through the making of photographic copies or by other means, records, manuscripts, maps, diaries, letters, war service records, journals, and papers of historical value, pertaining to the black race in Arkansas and black Arkansans;

(2) Collect and preserve portraits, photographs, sketches, drawings, and other likenesses of eminent black Arkansans and historic places, houses, buildings, and scenes involving the black race in Arkansas;

(3) Select and publish any papers, research, and other source material on the contribution of the black race in Arkansas history which it shall deem appropriate and funds will permit;

(4) Build up and maintain a reference library of the source material on the black race in Arkansas history; and

(5) Cooperate with, and receive the cooperation of, any historical associations or any black historical associations and other nonprofit organizations devoted to the history or the black history of this state.

(b) All records, papers, archives, and historical material at any time in the possession of the Black History Commission of Arkansas, excepting such as it may have on loan, shall be and remain the property of the State of Arkansas.

History. Acts 1991, No. 1233, § 4; 2007, No. 1601, § 4. **substituted "Black History Commission of Arkansas" for "Arkansas Black History Advisory Committee" in (a).**

Amendments. The 2007 amendment

13-3-205. State Historian's duties — Location of Black History Commission of Arkansas.

(a)(1) The State Historian shall assist the Black History Commission of Arkansas in the performance of its duties and shall be the custodian of all property and reference and source materials of the Black History Commission of Arkansas.

(2) The State Historian shall be charged with the duty of administering this subchapter.

(b) The offices of the Black History Commission of Arkansas and the archives of its records shall be located with those of the Arkansas History Commission.

History. Acts 1991, No. 1233, §§ 1, 6; 2003, No. 611, § 2; 2007, No. 1601, § 5.

Amendments. The 2007 amendment substituted "commission" for "committee" in the section heading and throughout the

section; and substituted "Black History Commission of Arkansas" for "Arkansas Black History Advisory Committee" in (a)(1).

13-3-206. Historical contributions by the black race — Arkansas history courses.

(a) The Black History Commission of Arkansas and the Commissioner of Education or his or her designee shall cooperate with each other to develop the materials for a program of historical contributions by the black race in Arkansas for inclusion in the curriculum segment of the Arkansas history required to be instructed in § 6-16-124.

(b) The Commissioner of Education shall ensure that these materials are reproduced and sent to all school districts in the state as a resource for inclusion in the Arkansas history courses.

History. Acts 1991, No. 1233, § 5; 2007, No. 1601, § 6.

Amendments. The 2007 amendment substituted "Black History Commission of

Arkansas and the Commissioner of Education" for "Arkansas Black History Advisory Committee and the Director of General Education" in (a).

13-3-207. Curtis H. Sykes Memorial Grant Program.

(a) There is created the "Curtis H. Sykes Memorial Grant Program", to be administered by the Black History Commission of Arkansas.

(b) The program may provide grants to individuals to assist with:

(1) Collecting materials bearing on the history of black Arkansans from the earliest times;

(2) Encouraging historical work and research in the background of black Arkansans to help the young citizens of the state appreciate their heritage; and

(3) Performing work in relation to the history of black Arkansans.

(c)(1) The commission shall promulgate rules necessary for the implementation of the program.

(2) The rules shall include:

(A) The procedure for making an application for a grant;

(B) The selection criteria for a grant;

(C) The limitations on use of grant money; and

(D) A procedure to provide for accountability of grant recipients and the monitoring of expenditures by grant recipients.

(d) This section is contingent on the appropriation and availability of funding for the program.

History. Acts 2009, No. 660, § 1.

CHAPTER 4

PUBLIC RECORDS MANAGEMENT AND ARCHIVES

SUBCHAPTER.

3. COUNTY RECORDS RETENTION.
4. SHERIFF'S OFFICE RECORD RETENTION SCHEDULE.

SUBCHAPTER 2 — ELECTRONIC COURT RECORDS

13-4-201. Electronic reproduction of court records.

RESEARCH REFERENCES

- U. Ark. Little Rock L. Rev.** Arkansas's Public Records Retention Program: Finding the FOIA's Absent Partner, 28 U. Ark. Little Rock L. Rev. 175.

SUBCHAPTER 3 — COUNTY RECORDS RETENTION

SECTION.

- 13-4-302. Court records.

13-4-301. Retention required — Destruction.

RESEARCH REFERENCES

- U. Ark. Little Rock L. Rev.** Arkansas's Public Records Retention Program: Finding the FOIA's Absent Partner, 28 U. Ark. Little Rock L. Rev. 175.

13-4-302. Court records.

All counties of the State of Arkansas shall maintain records for the county courts as follows, if they are currently being maintained:

(1) For circuit court, civil and criminal, domestic relations, juvenile, and probate records:

(A) Permanently maintain:

- (i) Complete case files and written exhibits for all courts;
- (ii) Case indices for all courts;
- (iii) Case dockets for all courts;
- (iv) Grand jury reports;
- (v) Grand juror lists;
- (vi) Petit jury lists in criminal cases;

(vii) Original records, documents, and transcripts relating to the summoning of jurors and jury selection for a petit jury in a criminal case; and

(viii) All probate records required to be maintained under § 28-1-108;

(B) Maintain for ten (10) years, after audit by the Division of Legislative Audit:

- (i) Records and reports of costs; and
- (ii) Fees assessed and collected; and

- (C) Maintain for three (3) years, after audit by the Division of Legislative Audit:
- (i) Cancelled checks;
 - (ii) Bank statements; and
 - (iii) Petit jury lists in civil cases and original records, documents, and transcripts relating to the summoning of jurors and jury selection for a petit jury in a civil case;
- (2) For county court records:
- (A) Permanently maintain:
 - (i) County court record;
 - (ii) Cemetery permits;
 - (iii) Statement of receipt and expenditures; and
 - (iv) County improvement districts; and
- (B) Maintain for ten (10) years, after audit by the Division of Legislative Audit:
- (i) County court file;
 - (ii) County general claims docket;
 - (iii) County road claims docket;
 - (iv) Contracts for lease-purchase on rental payments;
 - (v) County school board financial reports;
 - (vi) Solid waste disposal revenue bonds; and
 - (vii) Allocation of state funds for solid waste disposal; and
- (3) For quorum court records:
- (A) Permanently maintain:
 - (i) Ordinance, appropriation ordinance, and resolution register;
 - (ii) Record of proceedings;
 - (iii) Codification of ordinances;
 - (iv) Register of county advisory and administrative boards;
 - (v) Appointments to subordinate service districts; and
 - (vi) Quorum court minutes; and
- (B) Maintain for one (1) year the county treasurer's monthly financial report.

History. Acts 1991, No. 800, § 1; 2007, No. 226, § 1.

Amendments. The 2007 amendment, in (1), substituted "domestic relations, juvenile" for "chancery"; deleted "paternity-

bastardy"; inserted present (a)(vi) and (vii) and redesignated the remaining subsection accordingly; rewrote (1)(C)(iii); and made related changes.

SUBCHAPTER 4 — SHERIFF'S OFFICE RECORD RETENTION SCHEDULE

SECTION.

- 13-4-401. Retention required — Destruction.
- 13-4-402. Retention of records otherwise provided.
- 13-4-403. Criminal investigation documentation.
- 13-4-404. Jail booking records.
- 13-4-405. Dispatch reports.
- 13-4-406. Orders of protection.

SECTION.

- 13-4-407. General law enforcement documentation.
- 13-4-408. Items in the possession of a county sheriff's office pursuant to a criminal investigation or court case — Misdemeanors.
- 13-4-409. Items in the possession of a county sheriff's office pur-

SECTION.

suant to a criminal investigation or court case —
Felonies.

13-4-410. Items in the possession of a

SECTION.

county sheriff's office not pursuant to a criminal investigation or court case.

13-4-411. Applicability — Constables.

13-4-401. Retention required — Destruction.

(a)(1) A county sheriff's office shall maintain the records named in this subchapter for the period of time provided in this subchapter, after which time the records may be destroyed.

(2)(A) In no case shall administrative records be destroyed until at least one (1) year after an audit by the Division of Legislative Audit or a private auditor is completed and approved.

(B) Any record over fifty (50) years old will not be destroyed before written notice by the custodian of the records in question has been furnished to the Arkansas History Commission, describing the scope and nature of the records, at least sixty (60) days before the destruction of the records.

(b) If a record is photographically or otherwise transferred to other media of a permanent nature, the original document may be destroyed, except that a handwritten record over fifty (50) years old shall not be destroyed.

(c) Before any record is destroyed, the custodian of the record shall document the date and type of document.

History. Acts 2011, No. 43, § 1.

13-4-402. Retention of records otherwise provided.

A record retained by a county sheriff's office for which a retention period is otherwise provided in the Arkansas Code of 1987 Annotated is not subject to this subchapter, including without limitation records described in:

- (1) Section 12-12-104; and
- (2) Section 16-10-211.

History. Acts 2011, No. 43, § 1.

13-4-403. Criminal investigation documentation.

(a) In this section, "criminal investigation documentation" includes without limitation:

- (1) Incident or offense reports;
- (2) Arrest warrant records;
- (3) Search warrant records; and
- (4) Investigative case files, including:
 - (A) Photographs;
 - (B) Lab reports; and
 - (C) Audiovisual media.

(b) Criminal investigation documentation shall be retained for the following periods of time:

(1) If the documentation is associated with a Class Y or Class A felony, it shall be retained indefinitely;

(2) If the documentation is associated with any other felony, it shall be retained for ten (10) years;

(3) If the documentation is associated with a misdemeanor or violation, it shall be retained for five (5) years; and

(4) If the documentation relates to a civil matter or any other noncriminal matter, it shall be retained for three (3) years.

(c) Criminal investigation documentation may be disposed of by the order of the county judge upon recommendation of the county sheriff after the period of time dictated by subsection (b) of this section.

History. Acts 2011, No. 43, § 1.

13-4-404. Jail booking records.

(a) In this section, "jail booking records" means records generated and kept during jail booking procedures and while a person is in custody and includes without limitation:

(1) Fingerprint cards;

(2) Booking photographs; and

(3) Jail detention logs.

(b) Jail booking records shall be kept for thirty (30) years, after which time they may be disposed of by order of the county judge upon recommendation of the county sheriff.

History. Acts 2011, No. 43, § 1.

13-4-405. Dispatch reports.

(a) In this section, "dispatch reports" means records generated and kept regarding:

(1) Incoming calls to the county sheriff's office involving reports or complaints from the general public;

(2) Complaint cards; and

(3) Radio traffic logs.

(b) Dispatch reports shall be kept for a period of seven (7) years, after which they may be disposed of by the order of the county judge upon recommendation of the county sheriff.

History. Acts 2011, No. 43, § 1.

13-4-406. Orders of protection.

Orders of protection issued by a circuit court under § 9-15-201 et seq. shall be retained for a period of ten (10) years, after which time they may be disposed of by the order of the county judge upon recommendation of the county sheriff.

History. Acts 2011, No. 43, § 1.

13-4-407. General law enforcement documentation.

The following documents, records, and reports, computerized or on paper, shall be retained for a period of five (5) years, after which time they may be disposed of by the order of the county judge upon recommendation of the county sheriff:

- (1) Citations;
- (2) Summons;
- (3) Subpoenas;
- (4) Writs of execution;
- (5) Writs of garnishment;
- (6) Writs of possession;
- (7) Writs of replevin; and
- (8) Other writs in the possession of the county sheriff.

History. Acts 2011, No. 43, § 1.

13-4-408. Items in the possession of a county sheriff's office pursuant to a criminal investigation or court case — Misdemeanors.

(a) If an item is in the possession of a county sheriff's office pursuant to a misdemeanor criminal investigation or court case, it shall be retained for a period of thirty (30) days after:

- (1) The investigation for which it is being held has closed; or
 - (2) If the investigation results in a criminal prosecution, the date of the final judgment if there is no appeal of the conviction to circuit court.
- (b) A noncontraband item shall be returned to its owner.
- (c) The county sheriff shall petition the district court for the disposal or destruction of contraband or an item that an owner has not claimed.

History. Acts 2011, No. 43, § 1.

13-4-409. Items in the possession of a county sheriff's office pursuant to a criminal investigation or court case — Felonies.

(a) If an item is in the possession of a county sheriff's office pursuant to a felony criminal investigation, it shall be retained until the applicable statute of limitation for the most serious possible crime to which it could be connected has lapsed.

(b)(1) If an item is in the possession of a county sheriff's office pursuant to a felony court case, it shall be retained for a period of two (2) years after the date of the final judgment if there is no appeal of the conviction.

(2)(A) If there is an appeal of the conviction to an appellate court, the item shall be retained for three (3) years after the final judgment is entered and after the conclusion of any post-conviction litigation.

(B) Post-conviction litigation includes without limitation:

- (i) Proceedings under Rule 37 of the Arkansas Rules of Criminal Procedure;
 - (ii) State habeas corpus proceedings under § 16-112-101 et seq.; and
 - (iii) Federal habeas corpus proceedings under 28 U.S.C. § 2254.
- (c)(1) An item relating to the investigation of any of the following crimes shall be retained for ninety-nine (99) years:
- (A) Capital murder, § 5-10-101;
 - (B) Murder in the first degree, § 5-10-102;
 - (C) Murder in the second degree, § 5-10-103;
 - (D) Rape, § 5-14-103;
 - (E) Sexual assault in the first degree, § 5-14-124; and
 - (F) Arson, § 5-38-301.

(2) A deoxyribonucleic acid (DNA) sample or test result shall be retained for fifty (50) years.

(d) After the time periods prescribed in this section have lapsed and an item may be disposed of or destroyed, a noncontraband item shall be returned to its owner.

(e) The county sheriff shall petition the circuit court for the disposal or destruction of contraband or an item for which an owner has not asserted a claim.

History. Acts 2011, No. 43, § 1.

13-4-410. Items in the possession of a county sheriff's office not pursuant to a criminal investigation or court case.

(a) Any item in the possession of a county sheriff's office that is not associated with a criminal investigation or court case, such as a misplaced or lost-and-found item, shall be retained for one (1) year or until the rightful owner reclaims the item.

(b) At the end of the period of time prescribed by this section, the county sheriff may request that the county judge authorize the disposal of any such item through destruction, public sale, or transfer of ownership to the county sheriff's office if the item would serve a needed public benefit.

History. Acts 2011, No. 43, § 1.

13-4-411. Applicability — Constables.

This subchapter also applies to constables.

History. Acts 2011, No. 43, § 1.

CHAPTER 5

MUSEUMS

SUBCHAPTER

6. ARKANSAS POST MUSEUM.
10. MUSEUM PROPERTY ACT.

SUBCHAPTER 2 — MUSEUM SERVICES

A.C.R.C. Notes. Acts 2011, No. 679, § 2, provided: "GRANT ELIGIBILITY. To be eligible for a grant under this act, an entity must establish that it is a nonprofit non-governmental 501(c)(3) organization with a mission to form a national center of heritage and legacy within the State of Arkansas dedicated to United States Marshals.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2011, No. 679, § 3, provided:

"FINDINGS, PURPOSE, AND LEGISLATIVE INTENT.

"(a) The General Assembly finds that:

"(1) The United States Marshals have played a significant role in the settlement of the State of Arkansas and the United States;

"(2) The United States Marshals Service, established on September 24, 1789, as part of the Judiciary Act that was the first bill passed in Congress and signed into law by George Washington, is the oldest federal law enforcement agency in the nation;

"(3) Although originally established to protect the judiciary, the United States Marshals were often called the other duties as assigned agency because of their broad powers as evidenced by their call in 1794 to protect tax collectors during the Whiskey Rebellion and responsibility for enforcing the Fugitive Slave Act in 1850;

"(4) Today, there are 94 United States Marshals, one for each federal district, who continue to be appointed by and serve at the pleasure of the President of the United States, and numerous Deputy Marshals responsible for carrying out the day-to-day duties of the United States Marshals Service as civil servants;

"(5) Because of the over two hundred (200) year honorable history of the United States Marshals Service, the cultural and economic development of this state would benefit by the construction, operation, and

maintenance of a museum honoring the United States Marshals Service; and

"(6) Since there currently is not a museum in the country honoring the United States Marshals Service, having the only museum dedicated to the oldest federal law enforcement agency in the nation would bring national and regional attention to the state, increase tourism, create jobs, promote economic and cultural development, and promote the planning and development of infrastructure and resources to support the increased activity, all of which would have a substantial positive impact on the state as a whole.

"(b) The General Assembly further finds and determines that:

"(1) The construction, development, and maintenance of museums devoted to honoring the historical significance of the United States Marshals Service are noble, public purposes that will provide educational opportunities for all citizens in the State of Arkansas, promote industry and tourism, and provide economic development to cities and towns within the state;

"(2) Any funds obtained from a state or local government, a public, private, or nonprofit entity, or an individual intended to assist in the construction, development, or maintenance of a United States Marshals museum or exhibit would inure to the benefit of the people of this State by defraying development and operational costs and expenses; and

"(3) All funding provided for the construction, development, or maintenance of a United States Marshals museum or exhibit is found to be for a public purpose benefitting the public good and that any funds given, allocated, or loaned to a United States Marshals museum or exhibit by any state or local government is conclusively presumed to be for public uses and purposes.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

SUBCHAPTER 6 — ARKANSAS POST MUSEUM**SECTION.**

13-5-603, 13-5-604. [Repealed.]

13-5-603, 13-5-604. [Repealed.]

Publisher's Notes. These sections, concerning the Arkansas Post Museum Advisory Committee members and duties, were repealed by Acts 2009, No. 1484, § 3. The sections were derived from the following sources:

13-5-603. Acts 1989, No. 482, § 1; 1997, No. 250, § 79; 2001, No. 802, § 10.
13-4-604. Acts 1989, No. 482, § 1; 2001, No. 802, § 11.

SUBCHAPTER 10 — MUSEUM PROPERTY ACT**SECTION.**

13-5-1001. Title.

13-5-1002. Purpose.

13-5-1003. Definitions.

13-5-1004. Procedure for obtaining ownership of an abandoned loan.

13-5-1005. Museum's right to claim ownership of undocumented property.

13-5-1006. Duties of museum concerning a loan.

SECTION.

13-5-1007. Duties of lender concerning the lender's loan.

13-5-1008. Lien for expenses for care of unclaimed property.

13-5-1009. Conservation measures.

13-5-1010. Transfer of title to museum.

13-5-1011. Records retention schedule.

13-5-1012. Conflicts with § 18-28-201 et seq.

13-5-1013. Rules.

13-5-1001. Title.

This subchapter shall be known and may be cited as the "Museum Property Act".

History. Acts 2005, No. 2242, § 1.

13-5-1002. Purpose.

The purpose of this subchapter is to:

- (1) Establish procedures for vesting in a museum ownership of abandoned or undocumented property in the possession of the museum;
- (2) Establish procedures to terminate loans of property to a museum;
- (3) Allow a museum to conserve or dispose of loaned or undocumented property under certain conditions; and
- (4) Limit actions to recover loaned or undocumented property.

History. Acts 2005, No. 2242, § 1.

13-5-1003. Definitions.

As used in this subchapter:

- (1) "Address" means the most recent location of a claimant or lender as indicated by a museum's records pertaining to the property;

(2)(A) "Claimant" means a person who has established or claims entitlement to or an interest in property held by a museum.

(B) "Claimant" does not mean a lender;

(3) "Lender" means the person identified by the records of a museum as the owner or rightful possessor of a loan held by a museum;

(4)(A) "Loan" means property that a lender has placed in the custody of a museum.

(B) "Loan" does not include a consignment of property for sale or property donated to a museum;

(5)(A) "Museum" means an institution or entity located in Arkansas that:

(i) Is operated by a nonprofit corporation, trust, association, public agency, or educational institution;

(ii) Is operated primarily for educational, scientific, historic preservation, cultural, or aesthetic purposes; and

(iii) Owns, borrows, cares for, exhibits, studies, archives, or catalogues property.

(B) "Museum" includes historical societies, historic sites, landmarks, parks, archives, monuments, botanical gardens, arboreta, zoos, nature centers, planetaria, aquaria, libraries, technology centers, and art, history, science, and natural history museums;

(6) "Permanent loan" means a loan to a museum for an indefinite term;

(7) "Person" means an individual, association, partnership, corporation, trust, estate, or other entity;

(8) "Property" means a document or tangible object, animate or inanimate, with intrinsic historic, scientific, artistic, or cultural value that is in the custody of a museum;

(9) "Unclaimed property" means property meeting the following conditions:

(A) The property was placed with the museum for exhibition or other purposes; and

(B) The original person placing the property with the museum, or a person acting legitimately on the original person's behalf, has not contacted the museum in writing regarding the property for at least:

(i) Ten (10) years from the date of the beginning of the period for which the property was placed with the museum if the property was placed with the museum for an indefinite or undetermined period; or

(ii) Five (5) years after the date upon which the definite period in which the property was placed with the museum expired; and

(10)(A) "Undocumented property" means property:

(i) That is held by a museum; and

(ii) The ownership of which cannot be determined from the museum's records.

(B) Undocumented property shall not be construed to include loaned property.

13-5-1004. Procedure for obtaining ownership of an abandoned loan.

(a) By complying with subsection (b) or (c) of this section, a museum may obtain ownership of a loan if:

- (1) The loan agreement has expired; or
- (2)(A) The loan has been in the museum's custody for more than ten (10) years; and

(B) The loan agreement does not provide for a longer term for the loan or another disposition.

(b)(1) If the address of the lender is known, the museum shall send the notice required in subsection (d) of this section to the lender by certified or registered mail, return receipt requested.

(2)(A) If the return receipt showing receipt of the notice is returned and the lender fails to object within ninety (90) days of the date of the return receipt, the loan shall be considered abandoned and its ownership shall vest in the museum.

(B) If the museum did not receive a return receipt showing receipt of the notice, the museum may proceed in accordance with the provisions of subsection (c) of this section.

(c)(1) If the museum is unable to determine the identity of the lender or the lender's address, the museum shall publish the notice required under subsection (d) of this section at least one (1) time a week for four (4) consecutive weeks in at least one (1) newspaper with general circulation in:

(A) The county:

- (i) Of last known address of the lender; and
- (ii) In which the museum is located; or

(B) The State of Arkansas.

(2) If the lender fails to object within ninety (90) days from the last date of the publication, the loan shall be considered abandoned and its ownership shall vest in the museum.

(d) The notice shall contain:

- (1) The name, address, and telephone number of the museum;
- (2) A complete description of the loan;
- (3) The lender's identity if that information is available from the museum's records;

(4) The lender's last known address if that information is available from the museum's records; and

(5) A statement that the loan shall be considered abandoned and shall become the property of the museum if the lender or claimant does not make a timely objection in accordance with subsection (b) or (c) of this section, whichever is applicable.

13-5-1005. Museum's right to claim ownership of undocumented property.

(a) Undocumented property in the possession of a museum shall become the museum's property if no person has claimed the undocumented property within seven (7) years after the museum documented possession of the undocumented property.

(b) This section does not vest ownership of the undocumented property in the museum if the undocumented property is determined later to be:

- (1) Stolen property; or
- (2) Property whose ownership is subject to federal law.

History. Acts 2005, No. 2242, § 1.

13-5-1006. Duties of museum concerning a loan.

(a) At the time of a loan to a museum, the museum shall:

(1) Make and retain a written record of the following:

- (A) The lender's name, address, and telephone number;
- (B) A description of the loan;
- (C) The date of the loan; and
- (D) The expiration date of the loan; and

(2) Provide the lender with a signed receipt or copy of the loan agreement containing the information set out in subdivision (a)(1) of this section.

(b) The museum's general duties with respect to a loan include:

(1) Updating museum records whenever:

(A) A lender informs the museum of a change of address or change in the ownership of the loan; and

(B) The lender and museum negotiate a change in the terms of the loan;

(2) Providing the lender with notice about any update concerning the lender's loan; and

(3) Providing copies of §§ 13-5-1004, 13-5-1007, and 13-5-1009:

(A) To each lender who made a loan to the museum before the effective date of this subchapter and that loan is in the custody of the museum;

(B) To the lender at the time of the loan; and

(C) Upon a lender's request.

History. Acts 2005, No. 2242, § 1.

13-5-1007. Duties of lender concerning the lender's loan.

(a) A lender who has made a loan to a museum shall promptly notify the museum in writing about a change in:

(1) The lender's address; and

(2)(A) A change in the ownership of the loan.

(B)(i) It shall be the responsibility of the owner of a loan to provide sufficient proof of his or her ownership to the museum.

(ii) If there is a dispute about ownership, the museum shall not be liable for its good faith refusal to surrender a loan unless ordered by a court of competent jurisdiction.

(b) If the museum notifies the lender by certified or registered mail, return receipt requested, that the loan is terminated, the lender shall:

(1) Acknowledge in writing the termination and inform the museum whether the lender wants the return of the loan; and

(2)(A) Retrieve the loan no later than six (6) months from the date of the museum's notice terminating the loan if the lender wants the loan returned.

(B) If the lender fails to retrieve the loan within the time set out in subdivision (b)(2)(A) of this section, the loan shall be considered abandoned and ownership shall vest in the museum.

History. Acts 2005, No. 2242, § 1.

13-5-1008. Lien for expenses for care of unclaimed property.

A museum has a lien on unclaimed property for any expenses incurred while caring for the unclaimed property.

History. Acts 2005, No. 2242, § 1.

13-5-1009. Conservation measures.

(a) If immediate conservation is necessary to protect a loan, a museum's property, or the safety and welfare of the public and the museum's staff and the loan agreement between the museum and the lender does not provide otherwise, a museum has the right to apply conservation measures to a loan without the lender's permission.

(b) If immediate conservation is not necessary but conservation is needed to preserve the loan's value, a museum has the right to apply a conservation measure to a loan:

(1) After the museum has notified the lender by certified or registered mail, return receipt requested, that a conservation measure is needed; and

(2) If the lender or claimant:

(A) Does not respond to the notice within seven (7) days after the date on the return receipt showing receipt of the notice; or

(B) Refuses to consent to the protective measures and will not agree to the termination of the loan and the immediate retrieval of the loan.

(c) When a conservation measure is undertaken under subsection (a) or (b) of this section, the museum:

(1) Has a lien on the loan and on the proceeds of any disposition of the loan for the cost of the conservation measure; or

(2) Is not liable for any injury to or loss of the loan if the museum:

- (A) Had a reasonable belief at the time conservation measures were taken that the conservation measures were necessary; and
- (B) Exercised reasonable care in the choice and application of conservation measures.

History. Acts 2005, No. 2242, § 1.

13-5-1010. Transfer of title to museum.

A museum which acquires ownership of property under this subchapter receives the property free of any claim by a claimant or lender.

History. Acts 2005, No. 2242, § 1.

13-5-1011. Records retention schedule.

A museum shall keep all records relating to loans and undocumented property while the museum has possession of the property or for twenty-five (25) years, whichever period of time is longer.

History. Acts 2005, No. 2242, § 1.

13-5-1012. Conflicts with § 18-28-201 et seq.

This subchapter controls in the event that it conflicts with any of the provisions of § 18-28-201 et seq.

History. Acts 2005, No. 2242, § 1.

Cross References. Unclaimed Property Act, § 18-28-201 et seq.

13-5-1013. Rules.

The Department of Parks and Tourism, in consultation with the Department of Arkansas Heritage, shall promulgate rules to carry out the provisions of this subchapter, including, but not limited to, rules concerning the form and substance of loan agreements.

History. Acts 2005, No. 2242, § 1.

CHAPTER 6

ARCHEOLOGICAL RESEARCH

SUBCHAPTER.

- 3. SITES.
- 4. HUMAN SKELETAL BURIAL REMAINS.

SUBCHAPTER 2 — ARCHEOLOGICAL SURVEY

13-6-205. Appropriations — Disposition of funds.

A.C.R.C. Notes. Acts 2005, No. 2125, § 15, provided: "(c) The Arkansas Archeological Survey is authorized to enter into contracts with and to receive and expend

gifts, grants, or other funds from federal, private, or other sources to be used in furtherance of the program of the Survey within the limitations of the maximum

annual salary rates as set forth by law.

"The provisions of this section shall be in effect only from July 1, 2005 through June 30, 2007."

SUBCHAPTER 3 — SITES

SECTION.

13-6-302. Definitions.

13-6-303. [Repealed.]

13-6-306. State archeological landmarks — Penalty for disturbing.

13-6-307. Digging up or removing artifact

SECTION.

without permission —
Penalty.

13-6-308. Vandalism of archeological sites and artifacts — Penalty.

13-6-302. Definitions.

As used in this subchapter:

(1)(A)(i) "Archeological site" means a location containing the physical remains of human life or human activities that are no less than one hundred (100) years old.

(ii) An archeological site may but need not contain pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, graves, and human skeletal remains.

(B) "Archeological site" includes all aboriginal mounds, forts, earthworks, village locations, burial grounds, historic or prehistoric ruins, mines, or caves that are or may be the source of a significant amount of artifacts;

(2) "Artifact" means a relic, specimen, or object of an historical, prehistorical, archeological, or anthropological nature that:

(A) May be found above or below the surface of the earth; and

(B) Has scientific or historic value as an object of antiquity, as an aboriginal relic, or as an archeological specimen; and

(3) "Field archeology" means the study of the traces of human culture at any land or water site by means of surveying, digging, sampling, excavating, or removing subsurface objects or going on an archeological site with that intent.

History. Acts 1967, No. 58, § 1; A.S.A. 1947, § 8-801; Acts 2007, No. 217, § 1.

Amendments. The 2007 amendment deleted former (1) and (3), inserted

present (1) and (2), and redesignated former (2) as present (3); and in present (3), substituted "an archaeological site" for "a site"; and made related changes.

13-6-303. [Repealed.]

Publisher's Notes. This section, concerning penalties, was repealed by Acts 2007, No. 217, § 2. The section was de-

rived from Acts 1967, No. 58, § 8; A.S.A. 1947, § 8-808.

13-6-306. State archeological landmarks — Penalty for disturbing.

(a)(1) An archeological site of significance to the scientific study or public representation of Arkansas' aboriginal past may be publicly designated by the Arkansas Archeological Survey as a state archeological landmark.

(2) However, no sites shall be so designated without the express written consent of the state agency having jurisdiction over the land in question or, if it is on privately owned land, of the owner thereof.

(b) When an archeological site has been designated as a state archeological landmark, excavation for the purpose of recovery or the recovery of one (1) or more artifacts from the state archeological landmark by a person other than the survey or its designated agent is a:

(1) Class D felony for the first offense and a Class C felony for a subsequent offense if the value of the artifacts excavated or recovered or the cost to restore or repair the damage to the archeological site is greater than one thousand dollars (\$1,000); or

(2) Class B misdemeanor for the first offense and a Class A misdemeanor for a subsequent offense if the value of the artifacts excavated or recovered or the cost to restore or repair the damage to the archeological site is one thousand dollars (\$1,000) or less.

(c) Once so designated, excavation for the purpose of recovery or the recovery of artifacts from such sites by persons other than the survey or its duly designated agents shall be a misdemeanor.

History. Acts 1967, No. 58, § 4; A.S.A. 1947, § 8-804; Acts 2007, No. 217, § 3.

Amendments. The 2007 amendment added "State" to the section heading; re-

designated (a) through (c) as present (a) and (b), and added (b)(1) and (2); rewrote the introductory paragraph of present (b); and made related changes.

13-6-307. Digging up or removing artifact without permission — Penalty.

(a)(1) It is unlawful for any person, natural or corporate, to knowingly dig up an artifact from the private land of the owner without first obtaining the owner's permission.

(2) A violation of subdivision (a)(1) of this section is a:

(A) Class D felony for the first offense and a Class C felony for a subsequent offense if the value of all artifacts dug up or the cost to restore or repair the owner's property is greater than one thousand dollars (\$1,000); or

(B) Class B misdemeanor for the first offense and a Class A misdemeanor for a subsequent offense if the value of all artifacts dug up or the cost to restore or repair the owner's property is one thousand dollars (\$1,000) or less.

(b)(1) It is unlawful for any person, natural or corporate, to knowingly remove an artifact from the private land of the owner without first obtaining the owner's permission.

(2) A violation of subdivision (b)(1) of this section is a Class C misdemeanor for the first offense and a Class B misdemeanor for a subsequent offense.

History. Acts 1967, No. 58, § 6; A.S.A. 1947, § 8-806; Acts 2007, No. 217, § 4. “Trespass,” rewrote and redesignated the existing provisions as (a)(1), and added (a)(2) and (b).

Amendments. The 2007 amendment rewrote the section heading, which read:

13-6-308. Vandalism of archeological sites and artifacts — Penalty.

(a) In order that archeological sites and artifacts on state-owned or state-controlled land shall be protected for the benefit of the public, no person, natural or corporate, shall knowingly dig up and remove, write upon, carve upon, paint, deface, mutilate, destroy, or otherwise injure any artifact or archeological site.

(b) A violation of this section is a:

(1) Class D felony for the first offense and a Class C felony for a subsequent offense if the value of all artifacts dug up and removed or the cost to repair or restore the damage to the archeological site is greater than one thousand dollars (\$1,000); or

(2) Class B misdemeanor for the first offense and a Class A misdemeanor for a subsequent offense if the value of all artifacts dug up and removed or the cost to repair or restore the damage to the archeological site is one thousand dollars (\$1,000) or less.

History. Acts 1967, No. 58, § 7; A.S.A. 1947, § 8-807; Acts 2007, No. 217, § 5. “Vandalism”; rewrote (a); rewrote the introductory paragraph of (b); and added (b)(1) and (b)(2).

Amendments. The 2007 amendment rewrote the section heading, which read:

SUBCHAPTER 4 — HUMAN SKELETAL BURIAL REMAINS

SECTION.

13-6-404. Conveyance of exhumed remains.

13-6-405. Unclaimed remains.

SECTION.

13-6-408. Desecration of burial grounds and burial furniture.

13-6-404. Conveyance of exhumed remains.

(a)(1) If human skeletal burial remains are exhumed for relocation, then at the request of a direct descendant, that of a specific church, or that of a Native American tribal group recognized by the United States Government who can provide written or scientific documentation of such descent, or of direct church or tribal affiliation with the human skeletal burial remains, the human skeletal burial remains will be conveyed to such an individual or entity.

(2) If human skeletal remains are conveyed to an individual or entity under subdivision (a)(1) of this section, burial furniture exhumed with the human skeletal remains shall be conveyed to the individual or entity.

(b) By consultation with the groups mentioned in subsection (a) of this section, scientific studies may be undertaken.

History. Acts 1991, No. 753, § 8; 2011, No. 705, § 1.

Amendments. The 2011 amendment added (a)(2).

13-6-405. Unclaimed remains.

(a) If human skeletal burial remains are not claimed as set forth in § 13-6-404, the Arkansas Archeological Survey or a state-supported museum, or a museum accredited by the American Association of Museums, may serve as a depository for such skeletal remains as are required for scientific purposes.

(b) If not otherwise claimed as provided in this subchapter, skeletal burial remains and burial furniture shall be disposed of in accordance with existing laws, rules, and regulations for disposing of human remains.

History. Acts 1991, No. 753, § 9; 2011, No. 705, § 2.

Amendments. The 2011 amendment inserted "and burial furniture"" in (b).

13-6-408. Desecration of burial grounds and burial furniture.

(a) Anyone who intentionally or knowingly desecrates or permits desecration of a burial ground and associated burial furniture is committing on the first offense a Class D felony and on the second or subsequent offenses a Class C felony.

(b) The presence in the ground of grave markers, caskets, or casket hardware creates a rebuttable presumption that these are burial furniture and of the existence or presence of a human burial ground.

(c) Exempted from this section is disturbance of human skeletal burial remains or burial furniture by landowners or agricultural tenants as a consequence of agricultural activity or any other activity unless the landowner or agricultural tenant knowingly desecrates or knowingly allows desecration of a cemetery or burial site.

History. Acts 1991, No. 753, § 6; 1999, No. 1533, § 3; 2005, No. 2232, § 5.

CHAPTER 7

HISTORIC PRESERVATION

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. OLD STATE HOUSE COMMISSION.
4. PRAIRIE GROVE BATTLEFIELD COMMISSION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 13-7-111. Signage for war relocation centers.

13-7-111. Signage for war relocation centers.

(a) The General Assembly finds that:

(1) There are only two (2) war relocation centers for people of Japanese descent that were operated by the War Relocation Authority during World War II in Arkansas, Jerome and Rohwer;

(2) Rohwer is recognized as a National Historic Landmark for its importance in American history and importance to Japanese Americans and is an important part of Arkansas' history; and

(3) Jerome is an equally valuable part of the history of Arkansas and the history of many Japanese Americans.

(b)(1) The Department of Arkansas Heritage shall erect signs to inform visitors about the historic landmarks of Jerome and Rohwer in Southeast Arkansas, subject to the appropriation and availability of funding.

(2) Any signs placed in a right-of-way of a state highway shall be approved by the State Highway Commission.

(c) The signs shall include the following about Jerome and Rohwer:

(1) Information about the size and locations;

(2) Site plans;

(3) Photographs;

(4) Dates of occupancy; and

(5) Other information as determined by the Department of Arkansas Heritage that would be of value to visitors of Jerome and Rohwer.

History. Acts 2007, No. 1153, § 1.

Preambles. Acts 2007, No. 1153, contained a preamble which read: "WHEREAS, on February 19, 1942, seventy-four (74) days after the Japanese attack on Pearl Harbor, President Franklin D. Roosevelt signed Executive Order 9066, which established military exclusion zones and enabled the federal government to force more than one hundred ten thousand (110,000) people of Japanese descent to sell all of their belongings, evacuate their homes with only what they could carry, and enter confinement at assembly centers; and

"WHEREAS, seventy percent (70%) of the people who were forced into assembly centers were American citizens of Japanese descent; and

"WHEREAS, while first confined in assembly centers, the people of Japanese descent were then moved by train to war relocation centers which were established by the War Relocation Authority (WRA); and

"WHEREAS, most of the WRA centers were in California, Arizona, Idaho, Utah, and Colorado, but in the summer of 1942, two (2) war relocation centers emerged

from the swamps and forests of southeast Arkansas, Jerome and Rohwer; and

"WHEREAS, Jerome and Rohwer were selected by the federal government for their geographic isolation and location near railroad tracks in southeast Arkansas; and

"WHEREAS, Jerome and Rohwer were the only WRA centers east of the Rocky Mountains and the WRA centers that were farthest east; and

"WHEREAS, Jerome and Rohwer housed approximately seventeen thousand (17,000) Japanese American inmates; and

"WHEREAS, Jerome opened on October 6, 1942, and closed on June 30, 1944, at its peak population housed eight thousand four hundred ninety-seven (8,497) inmates, and has the distinction of being the last WRA center to open and the first one to close; and

"WHEREAS, Rohwer opened on September 18, 1942, and closed on November 30, 1945, and inmates assigned to Rohwer came from Hawaii; Los Angeles County, California; and San Joaquin County, California; and

"WHEREAS, Rohwer at its peak population housed eight thousand four hundred seventy-five (8,475) inmates; and

"WHEREAS, after the war, most of the physical traces of the WRA centers' existence disappeared, and now oats, soybeans, winter wheat, and cotton grow where the Jerome Relocation Center and Rohwer Relocation Center once stood; and

"WHEREAS, the evidence of Jerome's existence that remains today and that is visible from U.S. Highway 165 is a smokestack from the hospital complex, two concrete tanks from the wastewater disposal plant, and a former administration building that is visible from U.S. Highway 165; and

"WHEREAS, the evidence of Rohwer's existence that remains today is a cemetery with two (2) cement monuments and twenty-four (24) graves placed in a formal landscape that the inmates designed and created; and

"WHEREAS, in 1992, Rohwer was recognized as a National Historic Landmark

and opposite the cemetery sits two (2) contemporary granite monuments, one (1) that acknowledges the status as a National Historic Landmark and the other that acknowledges former inmate Sam Yada's dedication to educating future generations about the Japanese American experience in World War II in Arkansas; and

"WHEREAS, hundreds if not thousands of Japanese American visitors make a pilgrimage to southeast Arkansas each year to see where their ancestors lived and where their grandparents were born; and

"WHEREAS, Rohwer and Jerome are areas of substantial historic interest to all Arkansans and contribute to the state's overall economy by serving as recognized national tourist attractions to out-of-state visitors,

"NOW THEREFORE,

"BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:"

SUBCHAPTER 2 — OLD STATE HOUSE COMMISSION

SECTION.

13-7-203. Officers — Rules — Meetings — Reports.

13-7-203. Officers — Rules — Meetings — Reports.

(a) The Governor shall designate one (1) of the members of the Old State House Commission to serve as its chair until the expiration of his or her term or at the pleasure of the Governor.

(b) The commission shall select from its membership from time to time a vice chair and a secretary. The commission shall be authorized to employ the secretary either as curator or as receptionist.

(c) The commission shall adopt and may modify rules for the conduct of business and shall keep a record of its transactions, findings, and determinations, which record shall be public.

(d) The rules shall provide for regular meetings and for special meetings at the call of the chair, or of the vice chair if he or she is for any reason the acting chair, either at his or her own instance or upon the written request of at least five (5) members.

(e) A quorum of the commission shall consist of not fewer than five (5) members present at any regular or special meeting, and a majority affirmative vote of the members so present shall be sufficient for the disposition of any business.

(f) By the first Monday in September of each year, it shall be the duty of the commission to cause to be prepared and presented to the

Governor a report showing the operation of the commission during the previous fiscal year and containing recommendations.

History. Acts 1947, No. 256, § 3; A.S.A. 1947, § 8-203; Acts 1951, No. 385, § 1; Acts 2009, No. 558, § 1.

Amendments. The 2009 amendment, in (f), inserted "By the first Monday in September of each year," substituted "dur-

ing the previous fiscal year" for "since the date of its last previous report," deleted the last sentence, which read: "This shall be done annually not later than the first Monday in December," and made related changes.

SUBCHAPTER 4 — PRAIRIE GROVE BATTLEFIELD COMMISSION

SECTION.

13-7-401. Creation — Members.

13-7-402. Officers — Oaths and compensation of members.

SECTION.

13-7-403 — 13-7-405. [Repealed.]

13-7-401. Creation — Members.

(a) There is created a Prairie Grove Battlefield State Park Advisory Commission.

(b)(1) The commission shall be composed of seven (7) qualified electors of the State of Arkansas to be appointed by the Governor and shall serve in an advisory capacity to the State Parks Division of the Department of Parks and Tourism.

(2) Four (4) members of the commission shall be residents of Washington County, Arkansas.

(3) One (1) member of the commission shall be an historian by profession.

(c) The members of the commission shall be appointed for five-year staggered terms of office.

(d) Vacancies on the commission caused by death, resignation, or any other reason shall be filled by appointment by the Governor for the unexpired portion of the term.

(e)(1) The commission shall advise the division in the establishment of policies and procedures for the development and operation of the Prairie Grove Battlefield State Park.

(2) However, final authority for all matters relating to the development and operation of the park shall rest with the Director of the Department of Parks and Tourism.

(f) Under the supervision of the Superintendent of the Prairie Grove Battlefield State Park and with the approval of the director, the commission shall develop and coordinate efforts to encourage gifts or donations to the park.

History. Acts 1957, No. 197, §§ 1, 2; A.S.A. 1947, §§ 8-601, 8-602; Acts 2005, No. 1278, § 1.

13-7-402. Officers — Oaths and compensation of members.

(a) Before any member of the Prairie Grove Battlefield State Park Advisory Commission shall enter upon his or her duties as a member of the commission, the member shall take the oath required of elected state officials and shall file a copy of the oath in the office of the Secretary of State.

(b)(1) Upon its appointment, the commission shall meet and organize by electing one (1) member as chair and one (1) member as secretary and shall elect any other officers as the commission deems necessary.

(2) The officers shall be elected annually.

(c)(1) Members of the commission shall serve without compensation.

(2) However, the members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1957, No. 197, § 3; A.S.A. 1947, § 8-603; Acts 1997, No. 250, § 83; 2005, No. 1278, § 1.

13-7-403 — 13-7-405. [Repealed.]

Publisher's Notes. These sections, concerning powers and duties, acquisition of land, and payment for land acquired, were repealed by Acts 2005, No. 1278, § 1. These sections were derived from the following sources:

13-7-403. Acts 1957, No. 197, § 4; A.S.A. 1947, § 8-604.
13-7-404. Acts 1957, No. 197, § 5; A.S.A. 1947, § 8-605.
13-7-405. Acts 1957, No. 197, § 6; A.S.A. 1947, § 8-606.

CHAPTER 8

ARKANSAS ARTS COUNCIL

SUBCHAPTER.

1. ARKANSAS STATE ARTS ACT OF 1971.
2. PUBLIC ART PROGRAM.

SUBCHAPTER 1 — ARKANSAS STATE ARTS ACT OF 1971

SECTION.

- 13-8-102. Definitions.
13-8-103. Establishment and composition.
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A.C.R.C. Notes. Acts 2003, No. 608, § 1, provided: "The Office of Arkansas State Arts and Humanities is renamed the Arkansas Arts Council."

13-8-102. Definitions.

As used in this subchapter:

(1) "Agency" means the Arkansas Arts Council established in this subchapter. The agency shall include the advisory council and the position of executive director as established in this subchapter;

(2) "Arts" includes, but is not limited to:

- (A) Instrumental and vocal music;
- (B) Dance;
- (C) Drama;
- (D) Painting;
- (E) Sculpture;
- (F) Creative writing;
- (G) Architectural and allied fields;
- (H) Graphics;
- (I) Folk art;
- (J) Porcelain art;
- (K) China painting;
- (L) Craft art;
- (M) Industrial design;
- (N) Costume and fashion design;
- (O) Motion pictures;
- (P) Television;
- (Q) Radio;
- (R) Tape and sound recordings; and

(S) The arts related to the presentation, performance, execution, and exhibition of such major art forms;

(3) "Group" includes any state or other public agency and any nonprofit society, institution, organization, association, museum, or establishment in Arkansas, whether or not incorporated;

(4) "Office" means the Arkansas Arts Council established in this subchapter. The office shall include the advisory council and the position of executive director as established in this subchapter;

(5) "Production" means:

- (A) A play, with or without music;
- (B) A ballet;
- (C) A dance or choral performance;
- (D) A concert;
- (E) A recital;
- (F) An opera;
- (G) An exhibition;
- (H) A reading;
- (I) A motion picture;
- (J) Television;
- (K) Radio;
- (L) A tape or sound recording; and

(M) Any other activity involving the execution or rendition of the arts and meeting any standards approved by the agency; and

(6) "Project" means:

(A) A program organized to carry out the purposes of this subchapter, including a program:

- (i) To foster artistic creativity;
 - (ii) To commission works of art;
 - (iii) To create opportunities for individuals to develop artistic talents when carried on as a part of a program otherwise included in this definition; and
 - (iv) To develop and enhance public knowledge and understanding of the arts and humanities.
- (B) "Project" also includes, when appropriate:
- (i) The rental, purchase, renovation, or construction of a facility;
 - (ii) The purchase or rental of land; and
 - (iii) The acquisition of equipment, supplies, materials, and other personal property.

History. Acts 1971, No. 359, § 2; A.S.A. 1947, § 6-1002; Acts 1995, No. 1119, § 1; 2003, No. 608, § 3.

13-8-103. Establishment and composition.

- (a) There is established the Arkansas Arts Council as a separate and distinct agency under the laws of the State of Arkansas and under the jurisdiction and supervision of the Department of Arkansas Heritage.
- (b)(1) The Arkansas Arts Council shall consist of an advisory council and an executive director.
- (2) The Advisory Council of the Arkansas Arts Council shall develop and implement a comprehensive statewide program for the support of the arts in Arkansas pursuant to this subchapter.
- (3) The Executive Director of the Arkansas Arts Council shall administer the provisions of this subchapter and the rules, regulations, and orders established under this subchapter.

History. Acts 1971, No. 359, § 3; A.S.A. 1947, § 6-1003; Acts 2003, No. 608, § 4; 2005, No. 1962, § 54. § 1, provided: "The Office of Arkansas State Arts and Humanities is renamed the Arkansas Arts Council."

A.C.R.C. Notes. Acts 2003, No. 608,

SUBCHAPTER 2 — PUBLIC ART PROGRAM

SECTION.

13-8-207. Funds set aside.

- 13-8-207. Funds set aside.**
- (a) For each new state building for which total projected cost to construct and equip the building is greater than five million dollars (\$5,000,000), one-half percent (1/2%) or less of the total projected cost shall be set aside and designated within the method of finance for the purchase or commission of art through the Arkansas Public Art Program.
 - (b) One-half percent (1/2%) or less of the total projected cost of any major capital improvement on a state building shall be set aside and

designated within the method of finance for the purchase or commission of art through the program, if the total projected cost of the capital improvement is greater than five million dollars (\$5,000,000).

History. Acts 1985, No. 1079, § 3; in (a) and (b), substituted "five million A.S.A. 1947, § 6-1007; Acts 2007, No. dollars (\$5,000,000)" for "two million dollars (\$2,000,000)" and substituted "shall" 1273, § 1.

Amendments. The 2007 amendment,

for "may."

CHAPTER 9

ARKANSAS ENTERTAINERS HALL OF FAME BOARD

SECTION.

13-9-101. Members — Meetings.

Effective Dates. Acts 2005, No. 2103, § 39: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2005 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the Regular Session, the delay in the effective date of this Act beyond July 1, 2005 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2005."

13-9-101. Members — Meetings.

(a) There is created and established the Arkansas Entertainers Hall of Fame Board.

(b)(1) The board shall be composed of eleven (11) voting members, nine (9) of whom shall be appointed by the Governor for terms of six (6) years each.

(2) Two (2) members shall be appointed by the Governor from each congressional district in the state, and one (1) shall be appointed at large.

(3)(A) Additionally, the Secretary of State shall be an ex officio nonvoting member.

(B) The Speaker of the House of Representatives shall appoint one (1) voting member to serve at the pleasure of the Speaker of the House of Representatives.

(C) The President Pro Tempore of the Senate shall appoint one (1) voting member to serve at the pleasure of the President Pro Tempore of the Senate.

(D) In addition, the members of the board shall appoint two (2) ex officio nonvoting members.

(4) Members of the board shall not be compensated for their services, but each member may receive expense reimbursement in accordance with § 25-16-902.

(c)(1) The voting members of the board shall select a chair and a vice chair from among their own number.

(2) The board shall meet annually.

(3) A majority of the voting members shall constitute a quorum for the transaction of business.

(d) There is transferred all authority, rights, powers, duties, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, privileges, and jurisdiction in conformance with this subchapter belonging or granted to the board to the Department of Parks and Tourism.

History. Acts 1985, No. 671, § 1; A.S.A. 1997, No. 255, § 4; 2001, No. 1288, § 5; 1947, § 5-122; Acts 1987, No. 467, § 1; 2005, No. 2103, § 35. 1993, No. 703, § 1; 1997, No. 250, § 87;

CHAPTER 13

ARKANSAS CIVIL WAR SESQUICENTENNIAL COMMISSION

SECTION.

13-13-101. Arkansas Civil War Sesquicentennial Commission.

13-13-102. Members.

13-13-103. Duties.

SECTION.

13-13-104. Funding.

13-13-105. Expiration of Arkansas Civil War Sesquicentennial Commission.

13-13-101. Arkansas Civil War Sesquicentennial Commission.

(a) The Arkansas Civil War Sesquicentennial Commission is created to assist the Department of Arkansas Heritage in carrying out its duties and responsibilities as provided in this chapter.

(b) The purpose of the commission is to:

(1) Promote a suitable statewide observance of the sesquicentennial of the Civil War;

(2) Cooperate and assist national, state, and local organizations with programs and activities suitable for the sesquicentennial observance;

(3) Assist in ensuring that any observance of the sesquicentennial of the Civil War is inclusive and appropriately recognizes the experiences and points of views of all people affected by the Civil War; and

(4) Provide assistance for the development of programs, projects, and activities on the Civil War that have lasting educational value.

History. Acts 2007, No. 635, § 1.

13-13-102. Members.

(a) The Arkansas Civil War Sesquicentennial Commission shall consist of sixteen (16) members. The members shall elect a chair from among the commission members every four (4) years.

(b)(1) The Governor shall appoint four (4) members to serve four-year terms.

(2) The Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint two (2) members to serve four-year terms.

(c)(1) These persons shall be residents of Arkansas who are recognized as being learned and interested in the history and the archeology of this state and who have demonstrated an interest in preserving the cultural resources of the state.

(2) These persons also shall have a background in:

- (A) Arkansas history;
- (B) African-American history; or
- (C) Civil War history.

(3)(A) Persons initially appointed by the Governor shall serve two-year terms. Persons initially appointed by the Speaker of the House of Representatives shall serve three-year terms and persons initially appointed by the President Pro Tempore of the Senate shall serve four-year terms.

(B) Subsequent appointees shall serve four-year terms.

(C) Members may be reappointed.

(4) The remaining Arkansas Civil War Sesquicentennial Commission membership shall consist of the following persons or their designees:

- (A) Director of the Department of Arkansas Heritage;
- (B) Director of the Department of Arkansas Parks and Tourism;
- (C) Director of the Arkansas History Commission;
- (D) Director of the Old State House Museum;
- (E) President of the Arkansas Historical Association;
- (F) Director of the Arkansas State Library;
- (G) Chair of the Martin Luther King, Jr. Commission; and
- (H) President of the Arkansas Civil War Heritage Trails Foundation.

(5) The following persons shall serve in an advisory capacity:

- (A) President of the Sons of Confederate Veterans;
- (B) President of the United Daughters of the Confederacy;
- (C) Superintendent of the Pea Ridge National Military Park; and
- (D) President of the Sons of Union Veterans.

(d) Members of the Arkansas Civil War Sesquicentennial Commission shall serve without pay but may receive reimbursement in accordance with § 25-16-902.

13-13-103. Duties.

The Arkansas Civil War Sesquicentennial Commission shall have the following duties:

- (1) To plan, develop, and carry out programs and activities appropriate to commemorate the sesquicentennial of the Civil War era and encourage the development of programs that ensure that the commemoration results in a positive legacy and has long-term public benefits;
- (2) To encourage interdisciplinary examination of the Civil War;
- (3) To facilitate Civil War-related activities throughout the state;
- (4) To encourage civic, historical, educational, economic, and other organizations across the state to organize and participate in activities to expand the understanding and appreciation of the significance of the Civil War;
- (5) To coordinate and facilitate the public distribution of scholarly research, publications, and interpretation of the Civil War; and
- (6) To provide technical assistance to local organizations and non-profit organizations to further the commemoration of the sesquicentennial of the Civil War.

History. Acts 2007, No. 635, § 1.

13-13-104. Funding.

The General Assembly shall allocate sufficient funding to support the activities of the Arkansas Civil War Sesquicentennial Commission.

History. Acts 2007, No. 635, § 1.

13-13-105. Expiration of Arkansas Civil War Sesquicentennial Commission.

The Arkansas Civil War Sesquicentennial Commission shall cease to exist effective December 31, 2015.

History. Acts 2007, No. 635, § 1.

CHAPTER 14

HERITAGE TRAILS SYSTEM ACT

SECTION.

- 13-14-101. Short title.
13-14-102. Legislative intent.
13-14-103. Arkansas heritage trails.

SECTION.

- 13-14-104. Designation of heritage trails.
13-14-105. Studies of prospective heritage trails.

13-14-101. Short title.

This chapter shall be known and may be cited as the "Heritage Trails System Act".

History. Acts 2009, No. 728, § 1.

13-14-102. Legislative intent.

The purpose of this chapter is to:

- (1) Provide for the increasing outdoor recreational needs of the State of Arkansas;
- (2) Promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas, and historic resources of the state; and

(3) Recognize the valuable contributions that volunteers and private, nonprofit trail groups have made to the development and maintenance of historic trails by encouraging and assisting volunteer citizen involvement in the planning, development, maintenance, and management of trails.

History. Acts 2009, No. 728, § 1.

13-14-103. Arkansas heritage trails.

(a) A heritage trail shall:

(1)(A) Be a trail or route established by historic use and shall be historically significant as a result of that historic use.

(B) A route shall not be required to exist as a discernible trail to qualify as a heritage trail, but its location shall be sufficiently known to permit evaluation of historical interest potential;

(2)(A) Accurately follow the historic route with some deviations as necessary to avoid difficult routing through subsequent development or to enhance the public's enjoyment of the heritage trail.

(B) Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked as segments that link to the historic trail;

(3) Be of state or national significance to Arkansas or American history, including without limitation trade, commerce, exploration, migration, settlement, or military campaigns;

(4) Have a far-reaching effect on broad patterns of American culture, including trails significant to the history of American Indians; and

(5)(A) Have significant potential for public recreational use or historical interest based on historical interpretation and appreciation, including roadless segments developed as historic trails and at historic sites associated with the trail.

(B) The presence of recreation potential unrelated to historic appreciation is not sufficient for designation as a heritage trail.

(b)(1) A heritage trail shall follow as closely as possible and practicable the original trails or routes of travel of state historic significance.

(2) The purpose of a heritage trail is the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment.

(c) A land-based or water-based component of an historic trail that is on state-owned land and meets the criteria for a heritage trail shall be included as a state-protected component of a heritage trail.

(d) The Department of Parks and Tourism shall:

(1) Administer the provisions of this chapter; and

(2) Establish a uniform marker for the Arkansas heritage trails system.

History. Acts 2009, No. 728, § 1.

13-14-104. Designation of heritage trails.

(a) The General Assembly shall identify the trails or categories of trails that are part of the Arkansas heritage trails system.

(b) The following are designated as heritage trails:

(1) Butterfield Stage Route, a bifurcated route from the Missouri state line near Pea Ridge, Arkansas, to the Oklahoma state line near Fort Smith and from Memphis to Fort Smith;

(2) The Southwest Trail from the Missouri border to the Texas border;

(3) American Indian removal routes designated by the Department of Parks and Tourism, including without limitation land and water routes for Cherokee, Choctaw, Muscogee (Creek), Chickasaw, and Seminole tribes; and

(4) Civil War troop movement routes designated by the department.

History. Acts 2009, No. 728, § 1.

13-14-105. Studies of prospective heritage trails.

(a) The Department of Parks and Tourism, in consultation with the Arkansas History Commission, the Arkansas Historic Preservation Program, and the Arkansas State Highway and Transportation Department, shall conduct studies to determine the feasibility of designating additional trails as heritage trails.

(b) Studies under this section shall include without limitation:

(1) The proposed route of the trail;

(2) The areas adjacent to the trail to be utilized for historic purposes;

(3) The characteristics making the trail worthy of designation as a state heritage trail and its historic significance;

(4) The current ownership status of the land and the current and potential use of the designated route;

(5) The plans for developing and maintaining the trail and the potential cost; and

(6) The anticipated impact of public outdoor recreation use on the preservation of the prospective heritage trail.

(c) The following routes shall be studied by the Department of Parks and Tourism to determine the feasibility and desirability of designating other trails as heritage trails:

(1) The Line Road from Van Buren to Evansville;

- (2) The Memphis to Little Rock Road;
- (3) The Rock Roe Landing connection to the Memphis to Little Rock Road from where Rock Roe enters the White River to the Memphis to Little Rock Road;
- (4) The Cadron to Arkansas Post Road;
- (5) The Little Rock to Fort Smith Road section to Potts old place north of Potts Tavern;
- (6) The Little Rock to Fort Smith and Fort Gibson section from Potts to Fort Smith crossing the Arkansas River at Dardanelle;
- (7) The Upper Cut Road;
- (8) The Little Rock to Washington Road;
- (9) The Old Fort Towson Road from Washington to American Indian Territory;
- (10) The Antoine to Fort Towson Road;
- (11) The Ecore Fabre to Washington Route; and
- (12) The Ecore Fabre to Point Chicot Road.

History. Acts 2009, No. 728, § 1.

